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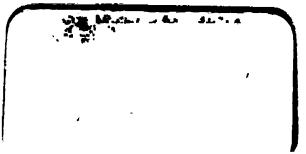

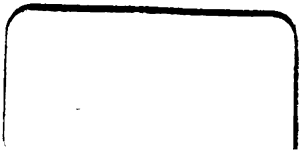

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ERRATA in this Volume.

Page 648, *l.* 16 *of Note, for*, viz. to the maintenance of the Dogma, *read*, to the maintenance, for instance, of the Dogma.

Page 649, *l.* 4 *of Note, for*, Pope's sneer, *read*, the sneer of Atterbury's friend Pope.

A COMPLETE COLLECTION

OF

STATE TRIALS,

&c. &c.

461. The Trial of HUGH REASON and ROBERT TRANTER, at the King's-Bench, for the Murder of Edward Lutterell, esq. Hil. 8 GEORGE I. A. D. 1722.*

February 3, 1722.

In Banco Regis.—DOMINUS REX *ver.* HUGONEM REASON et ROBERTUM TRANTER.

The Indictment was as follows:

"THE Jury present, that Hugh Reason and Robert Tranter, not having the fear of God before their eyes, but being moved and seduced by the instigation of the devil, the 17th day of October last, about the hour of ten of the clock in the forenoon of the said day, by force and arms, at the parish of St. Clement Danes, in the county of Middlesex, in and upon one Edward Lutterell, esq. in the peace of God and of our sovereign lord the king, then and there being, feloniously, voluntarily, and of their malice aforethought, did make an assault; and that the said Hugh Reason, with a pistol of the value of 5*s.* then and there charged with gun-

* This Case is reported in 1 Strange 499, as follows:

DOMINUS REX *v.* REASON and TRANTER.

"The defendants being indicted by the grand jury that attends the Court of B. R. for the murder of Mr. Lutterell, were brought up to the bar and arraigned, and pleaded Not Guilty; and upon their request were remanded to Newgate, instead of being turned over to the marshal.

"Upon the Trial (which was at bar) we who were counsel for the king offered to give in evidence several declarations made by the deceased on his death-bed, whereby he charged the defendants with barbarously murdering him, and without much hesitation the Court let us into that evidence. Whereupon we called a clergyman who attended him, and he swore that being desired by some friends of the defendants to press Mr. Lutterell to, declare what provocation he had given the defendants to use him in that manner; he declared upon his salvation, that as he was a dying man he gave them no provocation, but they barbarously murdered him: that in the afternoon of the same day, two justices of the peace being present, and having given him his oath, he made another and more particular declaration to that purpose, which the witness at the desire of the justices took down in writing, but Mr. Lutterell not being able to write, it was not signed by him, and therefore we did not deliver it in. And the same witness proved, that upon his administering the sacrament to him he exhorted him in the most proper manner to deal ingenuously, and declare once more, whether there was no provocation given by him, and whether he would stand by the account he had before given; upon which the deceased answered, that as he hoped to be judged at the last day, it was every syllable true, and soon after expired.

"When this gentleman had finished his evidence, the Court called upon us to produce the paper that had been written from the mouth of the deceased, saying that was better evidence than the memory of the witness; whereupon we acquainted the Court, that we had not the original, it being in the custody of one of the justices, whom going to subpœna we found he was in Wales; but the clergyman said he had a copy of it, which he took for his own satisfaction, before he delivered in the original to the coroner, and he offered to swear this to be a true copy.

"Whereupon a debate arose, whether this copy was evidence or not: we who were for the king insisting, that the first paper being only the writing of the witness, not signed by the examinant, this which he now produced, was as much an original as that. But the Court refused to let it be read, unless we could shew the original was lost, whereas it appeared we might have had it to produce, if we had sent after it in time.

powder and leaden bullets; which said pistol the said Hugh Reason in his right hand, then and there had and held into and against the aforesaid Edward Lutterell, then and there feloniously and of his malice aforethought did shoot off and discharge: And that the said Hugh Reason with leaden bullets aforesaid issuing and shot off out of the pistol aforesaid, then and there by the force of the said powder, the said Edward Lutterell in and upon the right part of the body of the said Edward Lutterell, under the right pap of the said Edward Lutterell, then and there feloniously, voluntarily, and of his malice aforethought struck: and that the said Hugh Reason then and there feloniously, voluntarily, and of his malice aforesaid, gave to

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"It was then objected by the chief justice, that since the written evidence was not produced, the whole evidence of the deceased's declarations ought to be rejected, for the first, second and third being all to the same effect, are but one fact of which the best evidence was not produced; and therefore he was of opinion, that we could not be let in to give any account of the first and third conference.

"But the other judges were of opinion we might, saying they were three distinct facts, and there was no reason to exclude the evidence as to the first and third declaration, merely because we were disabled to give an account of the second.

"Thereupon the witness was directed to repeat his evidence, laying the examination before the justices out of the case, which he did accordingly.

"And upon the whole evidence the fact (upon which the question of law arose) was this:

"The defendants were officers of the sheriff of Middlesex, and had a warrant to arrest Mr. Lutterell for 10*l.* they arrested him coming out of his lodgings, whereupon he desired them to go back with him to his lodgings, and he would pay the money. They complied with this, and Reason went up with him into the dining-room, having sent Tranter to the attorney's for a bill of the charges. Whilst Reason and the deceased continued together, some words passed between them in relation to civility-money, which Mr. Lutterell refused to give, and thereupon went up another pair of stairs to order his lady to tell out the money, and then returned to Reason with two pistols in his breast, which upon the importunity of the maid he laid down upon the table, and retired to the fire which was at the other end of the room, declaring he did not design to hurt the defendants, but he would not be ill used.

"By this time Tranter returned from the attorney's with the bill, and being let in by the boy went directly up stairs to his partner, being followed by the boy, who swore, that as he was upon the stairs (Tranter being that minute gone into the dining-room) he heard a blow given, but could not tell by whom, and thereupon hastening into the room he found Tranter had run the deceased up against the closet door, and Reason with his sword stabbing him. Mr. Lutterell soon sunk down upon the ground, and begged for mercy; but Reason standing over him continued to stab him, till he had wounded him in nine places.

"By this time the maid came in, and seeing her master in that posture, she and the boy run out for help, and immediately heard one of the pistols go off, and presently after the second, which a woman looking out at window on the other side the way proved to be fired by Reason; and several people upon the alarm of the maid coming into the room found Mr. Lutterell upon the ground where the maid left him, without any sword or pistol near him.

"Upon the defendants' evidence it appeared, that Mr. Lutterell had a walking-cane in his hand, and that Tranter had a scratch in his forehead, which might be probably a blow with the cane, and the blow heard by the boy upon Tranter's first going into the room. And one of the surgeons deposed, that the deceased had made such declarations to the clergyman, but this witness afterwards being alone with Mr. Lutterell pressed him very earnestly to discover the truth, upon which Mr. Lutterell did say, that he believed he might strike one of them with his cane, before they run him through.

"Upon this the question arose; whether Mr. Lutterell's striking one of the bailiffs first, would reduce the subsequent killing to be manslaughter only?

"For the king it was argued, that notwithstanding such stroke the defendants would be guilty of murder, that not being a sufficient provocation for giving the death's wound with the pistol: and for this Holloway's case, Cro. Car. 139, and Kelying 127, were cited, where the woodward finding a boy in the park who came to steal wood, tied him to a horse's tail in order to correct him, the horse run away and the boy was killed: and this was adjudged to be murder, because the tying him to the horse's tail, being an act of cruelty, for which no sufficient provocation had been given, he was answerable for all the consequences of it.

"The defendants insisted, that the bringing down the pistols was a sufficient alarm to them to be upon their guard; and then when he struck one of them, it was reasonable for them to apprehend themselves to be in danger; and in such case a prudent man would not leave it any longer in the power of his adversary to do him any further mischief.

"To this it was answered by the counsel for the king, that if Mr. Lutterell had continued to keep the pistols in his bosom, there might be some colour for an apprehension of danger; but the contrary appearing, viz. that he was at a distance from the pistols, with the defendants between him and them; they had no ground to fear any harm upon that account: and the death's wound was given after Mr. Lutterell was fallen down with the wounds he had received with the sword, and was entirely

the said Edward Lutterell, with the leaden bullets aforesaid, out of the said pistol then and there by force of the said powder shot off and discharged in and against the right part of the body of the said Edward Lutterell, under the right pap of the said Edward Lutterell, one mortal wound of the breadth of one inch, and the depth of nine inches, of which said mortal wound the said Edward Lutterell, from the said 10th hour of the said 17th day of October, until the 10th hour in the afternoon of the said day he languished, and languishing lived, at which said hour the said Edward Lutterell, at the parish aforesaid, of the wound aforesaid, died: And that the said Robert Tranter at the time of the felony and murder aforesaid, by the said Hugh Reason in manner and form aforesaid, feloniously, voluntarily, and of his malice aforesaid, committed and perpetrated, feloniously, voluntarily, and of his malice aforesaid there was present, aiding, abetting, assisting, comforting and maintaining the said Hugh Reason to commit the aforesaid felony and murder in manner and form aforesaid. And the jury say, that the said Hugh Reason and Robert Tranter the said Edward Lutterell in manner and form aforesaid, at the parish and county aforesaid, feloniously, voluntarily, and of their malice aforethought, did kill and murder, against his majesty's peace," &c.

To this Indictment they severally pleaded, Not Guilty, and on February 3, were brought to the King's-bench bar to receive their Trial, which proceeded in the following manner:

Clerk of the Crown. You the prisoners at the bar, these men which you shall hear called and personally appear, are to pass between our sovereign lord the king and you upon the trial of your several lives and deaths; if you will challenge them or any of them, you must do it as they come to the book to be sworn, before they are sworn.

Robert Dennes, esq. challenged.
Francis Lee, esq. challenged.
James Haley, esq. challenged.
Robert Sutton, challenged.
Benjamin Drake, challenged.
Edward Grosne, challenged.
Richard Newton, challenged.
1. Giles Riddle, jur.
2. William Pannell, jur.

John Mills, challenged.

3. Thomas Beckington, jur.
4. Abraham Harrison, jur.
5. Charles Maddock, jur.
6. Edward Bosvile, jur.
7. John Parsons, jur.
8. Thomas Cuthbert, jur.
9. Thomas Cliff, jur.
10. Miles Harper, jur.
11. Robert Kent, jur. And
12. John Salt, jur.

Clerk of the Crown. Cryer, make Proclamation.

Cryer. O Yes, &c. If any one can inform our sovereign lord the king's justices, the king's serjeants, or the king's attorney, of the felony and murder whereof the prisoners stand indicted before this inquest be taken between our sovereign lord the king, and the prisoners at the bar, let them come forth and they shall be heard, for the prisoners now stand at the bar upon their deliverance.

Clerk of the Crown. Hugh Reason, hold up your hand; Robert Tranter, hold up your hand.

Gentlemen of the jury, look upon the prisoners and hearken to their cause; they stand indicted, for that they not having the fear of God before their eyes, but being moved and seduced by the instigation of the devil, the 17th day of October last, about the hour of ten of the clock in the forenoon of the said day, by force and arms, at the parish of St. Clement Danes in the county of Middlesex, in and upon one Edward Lutterell, esq. in the peace of God and of our sovereign lord the king, then and there being feloniously, voluntarily, and of their malice aforethought, did make an assault; and that the said Hugh Reason, with a pistol of the value of 5*s.* then and there charged with gunpowder and leaden bullets; which said pistol the said Hugh Reason in his right hand then and there had and held into and against the aforesaid Edward Lutterell, then and there feloniously, and of his malice aforethought, did shoot off and discharge: And that the said Hugh Reason with the leaden bullets aforesaid, issuing and shot off out of the pistol aforesaid, then and there by the force of the said powder, the said Edward Lutterell in and upon the right part of the body of the said Edward Lutterell, under the right pap of the said Edward Lutterell, then and there feloniously, voluntarily, and of his malice aforethought struck; And that the said Hugh Reason then and there feloniously, voluntarily, and of his malice aforesaid, gave to the said Edward Lutterell, with the leaden bullets aforesaid, out of the said pistol then and there by force of the said powder shot off and discharged in and against the right part of the body of the said Edward Lutterell, one mortal wound of the breadth of one inch, and the depth of nine inches, of which said mortal wound the said Edward Lutterell, from the said 10th hour of the said 17th day of October, until the 10th

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in the power of the defendants: so that what they did afterwards was murder in them, because it exceeded the bounds of self-preservation.

"But the Court in the direction of the jury did positively declare, that if they believed Mr. Lutterell made the first assault upon the bailiffs, the killing with the pistol after he was down would be but manslaughter; and the jury upon that direction found them guilty of manslaughter only, though otherwise they were disposed to have hanged them for the barbarity of the fact.

"The defendants prayed the benefit of the statute, and were burnt in the hand.

hour in the afternoon of the said day he languished, and languishing lived, at which said hour the said Edward Lutterell, at the parish aforesaid, of the wound aforesaid, died: And that the said Robert Tranter at the time of the felony and murder aforesaid, by the said Hugh Reason in manner and form aforesaid, feloniously, voluntarily, and of his malice aforesaid, committed and perpetrated, feloniously, voluntarily, and of his malice aforesaid there was present, aiding, abetting, assisting, comforting and maintaining the said Hugh Reason to commit the aforesaid felony and murder in manner and form aforesaid. And the jury say, that the said Hugh Reason and Robert Tranter the said Edward Lutterell in manner and form aforesaid, at the parish and county aforesaid, feloniously, voluntarily, and of their malice aforethought, did kill and murder against his majesty's peace, &c.

They likewise stand charged on the coroner's inquest for the said murder.

Upon this indictment they have been arraigned, and thereto have pleaded Not Guilty; and for their trial have put themselves upon God and their country, which country you are: your charge is to enquire whether they be guilty of this felony and murder in manner and form as they stand indicted, or not guilty; if you find them guilty, you shall inquire what goods or chattels, lands or tenements they had at the time of the said felony and murder committed, or at any time since: if you find them not guilty, you shall enquire whether they fled for it: if you find that they did fly for it, you shall enquire of their goods and chattels as if you found them guilty; if you find them not guilty, and that they did not fly for it, say so and no more, and hear your evidence.

Mr. *Strange.* May it please your lordship, and you gentlemen of the jury, I am counsel in this case for the king. This is an indictment against the defendants Hugh Reason and Robert Tranter for the murder of Mr. Lutterell. The indictment sets forth, that the defendants not having the fear of God before their eyes, but being moved and seduced by the instigation of the devil, on the 17th of October last at ten of the clock in the morning, in the parish of St. Clement Danes in the county of Middlesex, did make an assault on Edward Lutterell, esq. that the defendant Hugh Reason with a pistol charged with gunpowder and bullets, which he then and there held in his right hand, into and against the said Edward Lutterell then and there feloniously, and of his malice aforethought did shoot off and discharge, and that the prisoner Hugh Reason, with the leaden bullets aforesaid, issuing and shot off out of the pistol aforesaid, then and there by the force of the said powder the said Edward Lutterell, in and upon the right part of the body of the said Edward Lutterell, under the right pap of the said Edward Lutterell, then and there feloniously, voluntarily and of his malice aforethought struck, and that the said Hugh Reason then and there feloniously, wilfully, and of his malice aforethought did give to the said Edward Lutterell, with the leaden bullets aforesaid, out of the said pistol, then and there by force of the powder shot off and discharged in and against the right part of the body of the said Edward Lutterell, under the right pap of the said Edward Lutterell, one mortal wound of the breadth of one inch, and the depth of nine inches, of which mortal wound the said Edward Lutterell, from the said 10th hour of the said 17th of October, to the 10th hour in the afternoon of the said day languished, and languishing lived, at which time the said Edward Lutterell at the parish aforesaid, of the wound aforesaid, died: and that the other defendant, Robert Tranter, was aiding and assisting the said Hugh Reason to commit the said felony and murder in manner and form aforesaid, and that they the said Hugh Reason and Robert Tranter, the said Edward Lutterell in manner and form aforesaid, at the parish and county aforesaid, feloniously, wilfully and of their malice afore-thought did kill and murder, which is laid to be against the peace of his majesty, his crown and dignity, to which the defendants have severally pleaded Not Guilty: they are likewise charged on the coroner's inquest for the said murder. We shall call our witnesses, and if we prove them guilty you will find them so.

Mr. Serj. *Cheshire.* May it please your lordship, and you gentlemen of the jury, I am counsel in this case for the king; the two prisoners at the bar, Hugh Reason and Robert Tranter, stand indicted before you, and are charged before you on the coroner's inquest, for the murder of Edward Lutterell, esq. and according to my instructions, which I will keep exactly to, he came by his death in this manner: on the 17th of October last, this gentleman coming out of his lodgings in Surry-street, going towards the water-side to take the water at the stairs there, the two prisoners came to him and did arrest him, and told him they arrested him at the suit of one Mr. Rous for 10*l.* He submitted to their arrest, desired them to return with them to his lodging and he would pay the money: they consented, and both returned to the door with him; but Reason was the only person that went up with him: Tranter said, he would go and fetch the attorney or solicitor's bill: the deceased went up one pair of stairs, Reason went with him, they were together in the dining-room, words happened between them, as will come from the evidence; they called him rogue, rascal, and minter, charged him as a person that refused to pay honest debts, and sheltered himself under reputed places of security. He directed his lady, who was then in her bed-chamber on the same floor up one pair of stairs, to go and fetch the money, by which it may be supposed that it was in order to pay the debt; but the witness did not hear the sum, but it is reasonable to presume, he had told her what it did come to. The defendant Reason said, You must order more

than that, I must have three guineas for my civility.* No, says the deceased, you have not used me so as to deserve three guineas or any other sum for civility, without making any demand you arrested me publicly in the street. My lord, according to my instructions, the deceased went up one pair of stairs and he returned down with a case of pistols; the maid-

* Mr. East, treating of Homicide in advancement or execution of the law (Pl. Cr. ch. 5, s. 86,) says: "If the officer in executing his office, exceed his authority, the law gives him no protection in that excess. And it behoves not only the ministers of justice and other public officers, but likewise private persons endeavouring to arrest or imprison in the several cases already treated of, to be very careful that they do not misbehave themselves in the discharge of their duty; for if they do they may forfeit this special protection. And therefore Mr. Justice Foster [see Crown Law, p. 292,] thinks that the killing of Mr. Lutterell in the manner reported by Strange, would clearly have been murder in the officers, who committed that fact." Then, after mentioning the facts which are stated in Strange's report, he proceeds: "This is reported to have been manslaughter, by reason of the first assault with the cane. On this state of the facts, the learned judge is of opinion, that the revenge taken was out of all proportion to the offence, and indicated a diabolical fury. But he rectifies the report by the addition of several material circumstances mentioned in the State Trials; 1. That L. had a sword by his side, which after the affray was found drawn and broken; 2. When he laid his pistols on the table, he declared that he had brought them down, because he would not be forced out of his lodgings; 3. He threatened the officers several times; 4. One of the officers was wounded in the hand with a pistol shot, both the pistols having been discharged in the affray, and also slightly in the wrist by some sharp pointed weapon, and the other had a similar wound in the hand; 5. The evidence was only, that while on the ground L. held up his hands, as if begging for mercy. Upon this the chief justice directed the jury, that if they believed that L. endeavoured to rescue himself, which he seemed to think, and very probably was the case, it would be justifiable homicide in the officers. However, as L. gave the first blow accompanied with menaces to the officers, and considering the circumstance of his producing loaded pistols to prevent their taking him from his lodgings, which it would have been their duty to have done if the debt had not been paid or bail given, he declared it could be no more than manslaughter." See, also, chap. 5, sect. 21.

Foster, after setting forth the chief justice's direction to the jury, thus concludes his account of the case:

"This direction of the chief justice the reporter hath totally omitted; and therefore I have taken the liberty to state the case more largely than otherwise I should have done: and I cannot help saying, that the circumstances omitted in the report are too material, and enter too far into the true merits of the case, to have been dropt by a gentleman of sir John Strange's abilities and known candour, if he had not been over-studious of brevity.

"Imperfect reports of facts and circumstances, especially in cases where every circumstance weighs something in the scale of justice, are the bane of all science that dependeth upon the precedents and examples of former times."

See, also, Hawkins's Pl. of the Cr. book 1, chap. 29, sections 9 and 16, and chap. 31, s. 61. As to the killing of an officer executing or attempting to execute an illegal warrant, see in this Collection the Case of Stevenson, A. D. 1759.

In cases of Homicide caused by heat of blood upon sudden provocation, the law of Scotland is less indulgent than that of England; in which and in some other particulars as to this matter, their legists are not backward to contrast the respective doctrines of the two codes. I transcribe the following passages from the two most eminent modern authors upon the Criminal Law of Scotland, with whose writings I am acquainted:

"Though the distinction of murder and homicide on provocation has become a part of our law as of that of England; it is not, however, to be imagined, that it is therefore established in the precise same terms in both, or that our practice has adopted the opinions of the English lawyers, with respect to the kind or degree of provocation which will save from the ordinary pains. On the contrary, there is in this article a great and substantial difference between our system and theirs. Thus far the two coincide, that no provocation of words the most foul and abusive, nor of signs and gestures how contemptuous or derisive soever, is of sufficient weight in the scale, materially to alleviate the guilt; so that if John, upon words or signs of reproach by James, straightway take up a knife and stab him, or a heavy hammer and beat out his brains, he shall be judged a murderer and die. In this also their doctrine agrees, that they make no account of provocation by trespass on lands or goods, if not accompanied with violence to the person; whereby, if John find James breaking down his fence, or entering his inclosures to search for game without his leave, or poinding John's cattle when they are upon John's own property; in none of these cases is it any thing less than murder, if John shall be so far transported with rage at this trivial and reparable offence, as to knock the trespasser on the head. In this all the English authorities are agreed; and certainly for reasons so obvious and convincing as admit of no reply.

"But it is further the sentiment of several, and among the ablest of their writers on law,

servant, Hester Gerrard, seeing him with those pistols, said to him, For God's sake what business have you with those pistols? Pray, lay the pistols away, mischief may happen: says he, I design to do them no harm, they have used me ill, called me rogue, rascal, and minter, I do not design to hurt them, but will not be ill used by them. The maid pressed him, for

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that any assault on the person of the killer sufficiently extenuates his guilt; to lower the case to manslaughter, though the injury be nothing more than a single blow with the hand, or twisting the nose, or a fillup on the forehead, or justling in the street, or whipping the person's horse out of the tract."—[This, I conjecture, alludes to Lanure's Case, 1 Hale, ch. 37, p. 456. As to which, Mr. East (Pl. Cr. s. 20,) rightly observes, "I should presume that the fact was done with violence, or great insolence."]—"Farther, it is the concurring doctrine of all their books, that where on a sudden quarrel, parties fight upon the spot with mortal weapons, and on equal terms, (each giving the other time to draw and be on his guard); or even if in heat of blood they fetch their weapons, and go to the field and fight, there also the deed comes under the notion of manslaughter only; and this without any regard to the first provocation, whether it be verbal or real, or from which of the parties it comes.

"Now, in all these articles, our practice is formed upon quite another plan. To have a good plea of extenuation, the pannel, at the time of killing, must have stood in the situation of an assaulted and injured person, one who was in a manner constrained to strike by the violence which he was suffering from the deceased. If in any degree the mortal strife was matter of convention between the parties, though but tacitly, and taken up at the moment, if the mortal blow was not the impulse of instant pain and agitation, but of a purpose to fight as on a certain plan and set of principles; this, according to our notions, is murder in the survivor. In which point of view, the circumstance of waiting till the other party draw and be on his guard, that favourable circumstance which makes it manslaughter by the law of England, would not with us be of any advantage to the pannel, as shewing plain deliberation, presence of mind, and method in his revenge. This, our rule, is proved by the two cases formerly mentioned, of James Murray [June 17, 1670,] and James Gray [June 11, 1678,] both of them cases of fair combat in heat of blood, and on a recent quarrel, to which may be added (though with respect to the sufficiency of the evidence, the verdict has been thought questionable,) the case of William Douglass [June 4, 1667,] for the slaughter of Home of Eccles, which was shortly thus; That these persons along with others, had quarrelled when at dinner in a tavern, and having taken coach instantly drove to the adjacent fields, where they set to confusedly with swords two against two, and Home was killed as was alleged (and indeed I think is proved) by Douglas. The same principle seems to have ruled in the case of Andrew Rutherford, indicted for the murder of James Douglas, [Nov. 9 and 16, 1674,] this slaughter had taken place on a sudden quarrel, of which it could not be said on the proof who was the author, or who had been the first to draw, only the parties were seen by persons at some distance to alight from their horses and thrust at each other, neither of them, as far as appeared, taking undue advantage, or giving back or declining the combat. The jury found the slaughter proved, and the self-defence not proved. And the Court, who, by their interlocutor had previously required it of the pannel to bring proof of self-defence, gave sentence of death.

"With us too, though not always a decisive, it is generally an unfavourable circumstance for the pannel in this question, that he has struck the first blow; if John strike James a blow with the hand, and James return it with severe blows of a staff, on which John being hurt and irritated, draws, but gives James time to do the like, and thus they fight and James is killed, this is murder by the Scottish practice, however such a case might be resolved in the courts of England. We cannot make the same allowance for his being provoked, who is only in a situation to be so by his own intemperate and unlawful act, and has shewn an absolute disregard of those very emotions in his neighbour, which he would have excused in his own case. His assault of his neighbour's person justified the return of blows, and though there be excess, he cannot therefore be either justifiable or excusable to resent these (while they do not put his life in danger) unto the death of his neighbour. This rule is pointedly announced in the interlocutor, in the case of ensign Hardie, where it is sustained to restrict the libel to an arbitrary pain, that the deceased was the first aggressor and had laid hold of the horse's bridle, and struck Hardie on the face with a rung or tree; but this passage immediately follows, 'But find the reply made by 'the pursuer, that the pannel beat the defunct 'on the face with a thrawn rod, before he struck 'the pannel with the rung or tree, relevant to 'elide the foresaid defence simpliciter.' The difference is still more remarkable with regard to the degree of injury and provocation which will be received in our courts to extenuate the guilt. That any, even gross indignity is sufficient, or any assault on the person of so slight a nature as those which are mentioned in the English books of law, this it would be contrary to the whole tenor of our records to believe. Suffice it to mention upon this head, (since the invariable course of judgment makes it needless to accumulate authorities) the case of William Aird [Sept. 8 and 9, 1693,] for the murder of Agnes Bayne, by throwing her backwards down stairs; the allegation was here repelled, of her having provoked him by tossing the contents of a chamber-pot in his face. In short it is to be

God sake lay them down, your lady will be frighted. He went to the far end of the room, laid down the pistols, and retreated to the fire-place. By this time there was a knocking at the door, and the boy, Thomas Hargrave, went to let in the person that knocked, and it proved the defendant Tranter: Tranter ran hastily up stairs, and the boy was following him, and

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understood, that it does not come up to the due description of the defence by our law, that the pannel is in rage and heat of blood, though owing to some improper freedom which the deceased had taken with his person. This passion must be occasioned by some adequate and serious cause, from severe and continued assault, such as carries agitation and alarm with it, a dread of farther harm and injury, as well as present smart and pain of body; whereby the sufferer is excusable in the loss of his presence of mind, and of the just measure of retaliation. Excepting the peculiar case of slaughter committed on the adulterer discovered in the fact, I am acquainted with no case of culpable homicide in our records, which is not more or less of this description; not a case of passion only, but of passion excited by bodily suffering, and mingled with terror, and with perturbation of spirits. And truly it may be doubted, whether in this our rule is not wiser and more salutary, at least more suitable to the fervent temper of the Scottish people, than that of the neighbouring kingdom, which excuses the mortal revenge of such inconsiderable wrongs. To curb and repress an over-jealous, choleric, or quarrelsome humour, as far as can be done without injustice in the particular case, and thus to bend the temper to the course of civil order, is the main scope of law in this whole department of offences against the person. And this object seems to be duly kept in view in our practice, when it has consideration of human infirmity in those difficult and agitating situations only, which require a more than ordinary strength of mind, and command of temper to withstand them; not in those where the pride more than the body of the man has been offended.

"However this may be, upon which it would not become the lawyers of either country to express themselves with confidence, clear it is, that such is our fixed and certain rule.

"And here I shall take occasion to observe touching the noted case of Mungo Campbell," [This Case (for the murder of lord Eglintoun,) occurred in the year 1769, and is reported by Maclaurin. It gave rise to much and warm discussion, in print as well as verbally. A full account of the Trial was published; and it was copiously commented on in the Gentleman's Magazine. A short argument, in which Dr. Johnson was one of the disputants respecting it, is related by Boswell, in his Tour to the Hebrides.] "though certainly a case of difficulty, and well deserving of that deliberate attention which it received, that it was judged in strict conformity to the whole series of precedents, either of an ancient or of a modern date, that are to be found upon record. On the whole circumstances of the situation, even those of the judges who were most favourable to the pannel, and along with them the jury, had been of opinion, that the injury to his person was not of that degree, nor had been prosecuted to that length, which could excuse his passion or extenuate the guilt, so that the deed was rather to be held a wilful and resentful deed, the fruit of the habit of mind, the proud and jealous temper of the man, who acted deliberately on the occasion, than of excusable perturbation and terror, or immediate distress of body. If, in prosecution of his unlawful purpose, lord Eglinton had advanced on Campbell and had laid hold of the piece, and thus a personal struggle had ensued, in which Campbell defending his property (and certainly he was not obliged to quit it) had been beaten and overpowered, or injured in his body before discharging his piece, this would have been a far more favourable case, and indeed, in my mind, hardly distinguishable from that already mentioned of Maclean in 1710, where an assault on a person to take his carabine from him, was found relevant to restrict the libel to an arbitrary pain. For this would not have been a situation of simple trespass on goods, but of trespass necessarily coupled to assault of the person. But taking all the particulars of this unfortunate story, it could scarcely be said that Campbell had been at all assaulted, or had any reasonable or well grounded apprehension of future harm to his person. Certainly, at the time of discharging his piece, any provocation he had yet received was not higher than if he had been justled in passing, or pulled by the nose, or kicked on the breech, no one of which indignities according to any authority or precedent that can be produced in the law of Scotland, would have been sufficient to excuse him. In fine, he had shewn nothing of that forbearance, that phlegm and tardiness of blood, which according to the course of our practice, is a necessary accompaniment of this plea, but rather a choleric and jealous disposition, hastily to lay hold of the first opportunity of offence, for the purpose of revenge.

"In the close of all I shall venture to observe, that as with regard to the degree of provocation which makes a case of culpable homicide, so also with regard to the judgment which may competently pass on the offender, it may deserve to be considered, whether our law is not upon as salutary a footing as that of England; for our judges have a discretion in this matter, to condemn the man-slayer to such a punishment, according to the measure of his fault, which shall truly serve as a correction to him, and a warning to others; whereas, in England, the judgment is one invariable thing, the forfeiture of moveables, and burning in the hand, which is very unequal in its application to the different conditions in life, and if carried into effect, may be either too severe or too lenient a

hearing a noise in the dining room, as my instructions are, he hastened the earlier to see what the matter was; as soon as he came into the dining room, the first thing he saw was, Tranter holding the deceased's arm in his, and the other defendant Reason stabbing him, and he saw the stab: he was going to give the second stab, but the boy took hold of the sword-arm; Reason takes the sword with his other hand, and says to the boy, Damn you, if you d'not get out of the room you shall die before your master: upon this he saw a second pass at the gentleman, and he cried Murder; upon his crying murder, the maid servant Sarah came, and she says she saw her master upon his back on the floor with his hands up begging for mercy, and saw the men stab him several times: she likewise cries out Murder, and as she went down stairs, and not till then, she heard a pistol go off, which must be after the poor, wounded, mangled man lay upon the floor. Some time after, not two minutes, she heard another pistol go off, by this time the noise was so great that the neighbourhood came in, particularly one Waters a waterman; Waters runs up stairs, and he finds the deceased at the further end of the room, lying there in a strange mangled condition; one of the prisoners endeavoured to make his escape, but he was seized, and so was the other.

It was thought proper in this dying condition, as it was apprehended the poor gentleman was in, that they should send for the curate of the parish, Mr. Peters; Mr. Peters did come, and according to my instructions, as they apprehended him to be dying, says a friend of the defendants, Pray enquire of the gentleman how this accident happened? He did so, and he will give you an account of what passed between him and the deceased before the justice of the peace came. But Mr. Vernon and Mr. Haynes, the two justices of the peace, soon after came in, and at their request, they having no clerk with them, Mr. Peters was pleased to sit down and take the examination in writing; having given him his oath, Mr. Peters was pleased to set it down; the substance of what he did say was this, "The bailiffs took the pistols from my table and shot me twice, the fat man run me through, and then drew my sword, which I broke myself in his hand, and begged for my life: I never fired a pistol, nor made one push; they both run me through, I offered to pay them the money." The condition the gentleman was in at that time was such, as it was not thought reasonable that he should sign it, but they will give you an account that he was perfectly sensible. My lord, in the afternoon somebody sent for Mr. Peters the clergyman again, and it was with an intent that the deceased might receive the holy sacrament; and Mr. Peters, like a prudent man, says, "According to the account you have given you have been hardly used: however it becomes me to hope and desire, and you to express, that you are in cha-

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course, but as sometimes managed, by gift of the forfeiture to the offender himself, becomes no punishment at all."—Hume's Commentaries (Description and Punishment of Crimes,) chap. 6, vol. 1, pp. 378, 389.

So, too, Mr. Burnett, (Treatise on Several Parts of the Criminal Law of Scotland, chap. 1, p. 17.):

"While the law as to homicide on provocation, has in latter years been greatly mitigated, it by no means goes the length of that indulgence which seems to be allowed by the law of our neighbouring country, to resentment on slighter injuries, where danger to the person and alarm for one's safety cannot be inferred, that it will punish with only fine and imprisonment him, who, without any adequate or just cause, but from a punctilious sense of honour, arising from a slight or implied injury, wilfully bereaves a fellow-creature of his life; an indulgence which is directly adverse to every rule and precedent in the law of Scotland.

"Nor, while it makes allowance for anger excited by a just cause, and which impels to immediate resistance, will it countenance any thing like deliberate cruelty, or the taking amends for injuries, even of the highest kind, after an interval of time. It is the frailty of resentment in heat of blood, not of revenge, after passion has had time to subside, that the law makes any allowance for. Hence all acts of reiterated and excessive violence, and which are committed in a cruel and unusual manner, though on strong and immediate provocation, will be held to indicate that malice which is the characteristic of murder; in the same way that acts of lesser violence, but which end in death, if done *ex intervallo*, under pretence of prior provocation, will be held to indicate the same temper, and to forfeit every indulgence of the law.

"The same principle holds in the case of immediate resistance on provocation, if it shall appear that the party acted not from the impulse of that provocation, but from a former grudge; or if, to satiate his resentment for past injuries, he purposely courts a quarrel, and induces provocation, as a colour to his malice. In such cases, the extenuation of passion can have no place. The real impulse, then, is malice and revenge, that deliberate and reflecting passion, for which the law makes no allowance."

It is, perhaps, too minute to be worth mention, that as to convictions for manslaughter, Mr. Hume appears not to have been aware, that the forfeiture of (moveables) goods and chattels is in practice never exacted; that the burning in the hand may in the discretion of the Court be changed to a moderate fine; and that moreover the Court may adjudge the offender to be imprisoned for any term not exceeding a year. See East's Pl. Cr. c. 5, § 4, and stat. 19 G. 3, c. 74, as there referred to.

rity, before I administer the holy-sacrament." Says he, 'As I shall appear before the great God of heaven, what I told you is true, I was barbarously murdered; however I am in perfect charity with them, I forgive them, and I pray Almighty God to forgive them their indiscretion." My lord, he did continue for some time in a languishing way, though all care was taken to save his life. On examination after his death, (which is a sad circumstance in the case) there are found no less than ten wounds on him, many of them mortal; he did continue till the 17th about 10 at night and then he died. My lord, here is a case of great consideration; and as on the one hand the defendants are officers and ministers of justice, and must be protected in serving of their process, and as long as they do their duty must not be abused; yet when people submit to their authority, they too must be protected, and the law, that requires the one to submit, requires the other to protect and preserve their lives, and if any officer gives unreasonable correction, where they make no resistance in cases of durance only, where hardships and difficulties are put upon them, so as to shorten their lives. I submit it to my lord's direction, whether they are not guilty of the murder? To shew how careful the law is of the life of man, my lord Coke* says, If any man who is in custody of a gaoler dies, the coroner's inquest must sit upon him; and it is for this reason, that the king may be apprized that the subject had no foul play, but came to a natural death; this policy of law is a good one. These, gentlemen, are the bounds which will be taken into consideration, and when we have called our witnesses, it must be left to my lord's direction and your consideration, whether the defendants' case is a case to be justified, or whether or no they will not deserve the punishment due to ruffians and assassins?

Mr. *Reeve.* I am counsel likewise in this case for the king: The facts have been fully opened in every particular circumstance, and I apprehend this is not a matter proper for us to shew with its usual aggravation; for considering the prisoners are not allowed counsel, we are only to lay the matter fairly before the jury and the court, both in relation to matters of fact and of law.

True, the defendants are officers of justice, and as such as are entitled to the protection of the law, so far as the law authorises them in what they do; but in case they exceed that authority, and use barbarity to their prisoners, where there is no occasion for it, they exceed the bounds of their authority, and what happens afterwards by a needless quarrel, they themselves are the occasion of; and if a person is killed, I submit it to your lordship if they are not guilty of murder.

We agree, my lord, if resistance is made by a person arrested, and it is necessary for the preservation of the prisoner, or for the life of the officer, if his life is attempted by the prisoner, and in doing what is necessary for their defence, and for the keeping of their prisoner, there happens a quarrel commenced by the fault of the prisoner, we agree the officers are not to be blamed: But if a quarrel is commenced by the officers against a prisoner submitting to the law, and to their authority, and willing to do that which the law requires, namely, to pay the debt, then only for civility money they use durance, and they used him ill, and they begin the quarrel and fight with the man on that account, we must submit it, whether it is not murder. We must agree in our evidence, that there was not any person present at the time of the beginning of the quarrel, nor who continued there during the quarrel: But from the circumstances, and the evidence we have to lay before the jury, it will amount to a proof, that this quarrel was begun by the officer. It is true, there were pistols fetched by the deceased, but these pistols, if we shew they were not designed to be made use of to injure the bailiffs, but were only for his own preservation, if he should be ill used by them; if after he had taken these pistols he dismissed himself from the custody of these pistols, as we apprehend will appear from the evidence, and they take up these pistols, and with one of these pistols shoot their prisoner, we apprehend that will take off the circumstances, that would seem in favour of them. My lord, we will call our witnesses, and prove all our facts, and then we must submit it to your lordships' direction to the jury, whether on those facts it doth not appear that the offence commited is murder.

L. C. J. (Sir John Pratt.) Call your witnesses.

Thomas Hargrave sworn.

Mr. *Hungerford.* My lord, Thomas Hargrave was the deceased's servant, and he saw more than any body; he will give your lordship an account of the matter.

Serj. *Cheshire.* Thomas Hargrave, do you tell my lord and the jury, what you know in relation to your late master, Mr. Lutterell, what past between him and the defendants, and either of them, tell from the beginning, and be sure you tell the truth.

[At the prisoners' desire the witnesses were ordered out of Court.]

Hargrave. The first beginning, my lord, was, my master sent me out of the house to call a pair of oars to go up to Westminster on Tuesday between nine and ten o'clock.

L. C. J. What day of the month?

Hargrave. I do not know; with that I went and called a pair of oars, and came back and told him I had called them; says he, Thomas, get your hat, and go along with me; when he had got two or three doors from our lodging, a little man, whose name is Tranter, clapt him on the shoulder, and presently after came su-

* 3 Inst. 52, 91.

other man, Reason, and said they arrested him; with that my master says, "Gentlemen, if you will go with me, you shall have your money, my wife is with child, and I am afraid she will be frightened." "No, damn you, we will go with no such Minter;" with that with great persuasion, my master got them to go to his lodging: my master said, "fetch the attorney and I will pay the money:" Reason sent Tranter for the attorney, and Reason went up with my master, who said to my mistress, "My dear, don't be frightened, here are two rascals who have abused me in the street;" and my mistress said to me, "Go to my nephew:" I went, but he did not immediately come; when I returned I went into the room, and there was no harm then, my master was walking about the room, and Reason stood with his back to the ceiling with his face to the pistols. My master said, "Let me see your warrant:" Reason shewed it him, and he said, "Wipe your arse with it," and throwed it down upon the ground. Reason asked for civility money; my master said, "No; he would give him none, for he had not used him well." At last Tranter came; I opened the door to him, he run up stairs, I staid to shut the door, and I heard a rustling or noise; upon which I ran up stairs after Tranter, and I saw Tranter close with my master and throw him against the closet door, and Reason took his sword and run my master through; I took Reason hold of the sword arm, and he said, "Damn me, if you don't go out of the room you shall die before your master;" I heard no pistol all that time.

Serj. *Cheshire.* Did you go in after the pistol was shot off to see your master?

Hargrave. No, I did not see him till after he was carried into the other room.

Serj. *Cheshire.* Do you know of any direction given by your master about fetching the money?

Hargrave Yes, I heard my master say to my mistress, "Fetch the money, and I will pay these rascals."

Mr. *Reeve.* I think you say upon hearing of a scuffle you ran up stairs, and you saw Tranter run your master against the closet door.

Hargrave. Yes, Sir.

Mr. *Reeve.* Had your master any weapon?

Hargrave. No.

Mr. *Reeve.* Where were the pistols?

Hargrave. One was on the table, and the other in the window.

Mr. *Hungerford.* How far were the pistols from your master, were they within his reach?

Hargrave. No, Sir.

Mr. *Reeve.* You say you saw him stab your master.

Hargrave. Yes.

Mr. *Reeve.* Was there any attempt to give another stab?

Hargrave. Yes, he went to give another stab, I took him by the sword arm, and he said, "Damn you, you shall die before your master." upon that I went and cried out Murder.

L. C. J. You say that before that he demanded civility money?—*Hargrave.* Yes.

L. C. J. What said your master?

Hargrave. He, said, "I will give no rascals as you are civility money, for you have shewed me no civility."

L. C. J. Then you went down by your mistress's direction to call her nephew; when you returned, before you came up, what did you hear? Did you hear any noise, or bustle, or blow?—*Hargrave.* No.

L. C. J. None at all?

Hargrave. No; it was after Tranter came that I went up stairs again.

L. C. J. When Tranter came, you opened the door to him and followed him up stairs?

Hargrave. Yes.

L. C. J. Did you hear before Tranter entered the room any noise or stroke?

Hargrave. Only two or three words.

L. C. J. What were those words?

Hargrave. I don't know.

Mr. *Hungerford.* What said Reason, when your master told him he did not use him well?

Hargrave. Then he was mad, he swore and called him a great many names, called him a Minter, and I don't know what.

Reason. Did not your master request us to go to the Tilt-yard coffee house?

Hargrave. No; he said, "If you will go with me I will pay the money;" you said, "I will go with no such Minter."

L. C. J. Did your master desire them to go to any particular place?

Hargrave. He said, "If they would go with him to Westminster, he would pay them the money;" but they refused and said, "they would go with no such Minter."

L. C. J. Did your master propose to go to his own lodgings?

Hargrave. Yes, when they would not let him go there.

L. C. J. Why would he had them have gone to Westminster?

Hargrave. Because for fear of frightening his wife, she was great with child; with great persuasion he got them to go to his lodging.

Reason. Did he not ask us to go to his lodging?

Hargrave. I don't know, I did not hear him.

L. C. J. You said just now with much ado your master persuaded them to go to his lodging, now you say you did not hear him ask them to go; I only admonish you not to be too hasty in your answers, but to consider. Who proposed going to your master's lodging?

Hargrave. Why my master, when they would not go there.

Reason. Did not I ask him to go to the Crown-tavern?

Hargrave. Not that I heard; I heard Reason bid Tranter go for the attorney.

L. C. J. Did you hear Tranter ask Mr. Lutterell to go to the Crown-tavern?

Hargrave. No, Sir.

Tranter. At whose desire did I go to the attorney?

Hargrave. Why my master said, "fetch your attorney, and I will pay you your money."

Tranter. Did not I desire your master to send you, and he said, Damn you, you shall go?—*Hargrave.* No, I heard no such thing.

Hester Gerrard sworn.

Serj. *Cheshire.* Do you tell my lord and the jury what you know when the defendants, or either of them were at Mr. Lutterell's lodgings, and what passed there? Begin at the beginning, tell all you know.

Hester. I happened to be in the kitchen when my master came in.

Serj. *Cheshire.* Tell us the time and the day of the month?

Hester. I don't know indeed, it was of a Tuesday.

Serj. *Cheshire.* Do you know what month?

Hester. I don't know. Being in the kitchen I heard my master return again, when he was but just gone out before; hearing his tongue I stepped to the stairs, and wondered he should come in again so soon; I saw him come in with another man, I heard him go up stairs, I listened, and I heard him speak loud; I understood he was arrested, I was surprised at it; I staid a little while till he went up, then I went up to my mistress, because she was with child; I was afraid she would be frighted; when I came up she was in the dining-room with my master and Mr. Reason, and in a little time she went out of the dining-room into the bed-chamber, and she was heaving, and in some time my master and Mr. Reason was in the room together, my master talked and walked about the room; I staid with my mistress some time, and at last I heard my master go up stairs, and he came down immediately again; upon this I went into the room, my master had two pistols, and he put them on each side of his coat; I asked him, "What do you do with those pistols? if my mistress comes she will be frighted:" Says he, "I don't design to do any hurt." Then he told me how they had abused him in the street, and called him Minter; this man (pointing to Reason) was in the room all the time. Sir, says I, pray lay down the pistols, and he came and lay down both the pistols on the table at my request, and he had only his cane in his hand. I went into the room again to my mistress, and when I came there she was in her closet taking out some money: She got up, locked the closet door, and sat down on the bed-side, and was frighted. I persuaded her not to be frighted: Afterwards I heard somebody knock at the door, and I stepped out to the top of the stairs to see who came in, and I saw I suppose that man (pointing to Tranter): the boy let him in, I saw him come along the entry, and the boy follow him: Upon that I went in to my mistress, and said there was a second person come, I don't like him, shall I stop him on the stairs; he went into the room, and I saw the boy follow him; I went in to my mistress again for fear she should be frightened; I heard a noise, but did not know what it was; I heard the noise grow greater; I stepped softly through the passage, threw open the dining-room door, and I saw this gentleman (pointing to Reason) stabbing my master with all his might and main, and he on his back on the floor, lifting up his hands as if he begged for mercy. The other bailiff had his back towards me, standing by the side of my master; I ran to the door and cried out murder; then off went the pistol: I was frightened, for I thought they had shot after me; and in about two minutes there went off another.

Mr. *Hungerford.* In that place where your master was, could he come at the pistols?

Hester. No, my master had his two hands lifted up thus.

Mr. *Hungerford.* Had your master any thing in his hand?—*Hester.* No.

Serj. *Cheshire.* What condition did you leave your master in when you went out of the room?

Hester. He was upon the ground on his back, and his two hands lifted up thus, and Mr. Reason stabbing him when upon the ground; he stabbed him upon the left side.

Serj. *Cheshire.* I ask you, consider, by the oath you have taken, whether the pistol did go off till after you had left your master, and he was stabbing of him?

Hester. It was after that I saw him, within two minutes after, upon my crying out murder the people came up stairs.

Reason. How long was this after Tranter came?—*Hester.* Immediately.

Reason. How long was it after Tranter came in before you saw this?

Hester. Not long, all the action was not long.

Mr. *Strange.* You did not observe where the pistols lay?—*Hester.* No.

Mr. *Strange.* Did you observe your master had any thing in his hand?

Hester. No, I did not.

L. C. J. Did you see your master when he went out in the morning?

Hester. No, I heard him.

L. C. J. You saw him when he returned?

Hester. Not till he was up in the dining-room.

L. C. J. Had your master any sword on?

Hester. I believe he had, I did not mind.

L. C. J. When your master came in and Reason after him, you heard your master talk of an arrest, and that you had the curiosity of hearing what passed between them; did you hear any words of heat or passion?

Hester. No, my lord, I heard my master talk something, by which I understood my master was arrested.

L. C. J. Did your master seem angry?

Hester. Yes; because they seemed so uncivil, that they did not come and give him notice of it.

Mr. *Hungerford.* You say you saw your mistress telling money, can you guess at the quantity of it?—*Hester.* No.

Mr. *Hungerford.* Can you tell for what purpose she was telling the money?

Serj. *Cheshire.* Did you hear Mr. Lutterell speak to his lady to fetch any money?

Hester. I was not in the room.

Reason. Did I stay in the room by myself when your master went up stairs?

Hester. Yes, you did.

L. C. J. And when he came down he had a case of pistols?

Hester. When I saw him he had them in his hand, and when I insisted upon his laying them down, he came and laid them down on the table by me.

Mr. *Hungerford.* When did your master die?

Hester. He died the night following, I was with him all the time.

Thomas Waters the waterman sworn.

Serj. *Cheshire.* Thomas Waters, will you tell my lord and the jury what you know on the occasion of a noise and crying out murder at Mr. Lutterell's lodging.

Waters. My lord, I was at the water-side when capt. Lutterell came down to go by water, I went down to carry him, there two men crossed over the way to him; I was gone down to my boat to wait for him, but he not coming down, I came back again, and seeing them go into the house, I went to the water-side, and staid there some time, and the lad running out of the house, and crying fire, murder, I run up, and run into the door, and when I was about half way up stairs, "Lord," says the boy, "they are murdering my master;" I run to the stair-head and heard the pistol go off, and then said to the boy, is there any more pistols? Then I opened the door, and went in, and met Reason with his sword drawn in his hand, and as he was putting it in it stuck.

Serj. *Cheshire.* Where was captain Lutterell?

Waters. Laid down on the floor, all in his gore; when I came into the room the young man followed me in; I saw one pistol lay upon the table; Tranter was behind Reason, Reason was putting his sword into his scabbard, and it stuck; and as I came in Tranter shewed me his hand, and said, See how I am used; Reason was opening the door; I took hold of him and said, You must go no further, here is murder done; then the constable came in, and I charged the constable with them. The captain's sword was in the middle of the room broke, he lay on his right side with his arm on the chair.

Serj. *Cheshire.* How far was the table off?

Waters. The whole breadth of the room; he lay just before the fire-place; I saw but one pistol; I came in when the last pistol went off, and I met Mr. Reason, and put him by with my hand, to come into the room.

Tranter. What wound did you see me have?

Waters. No more than in your hand; he shewed me his hand.

L. C. J. Did it appear to you upon looking on his hand, that he had received a wound in his hand?

Waters. Yes, my lord, I believe he was wounded, because he shewed me his hand, and it was bloody.

Tranter. Was my head broke?

Waters. I did not see that.

L. C. J. When you came into the room you saw but one pistol?

Waters. I saw but one, and that upon the table, just as I came into the room.

L. C. J. How far from Mr. Lutterell was it?

Waters. I believe three yards.

L. C. J. How far from the prisoner, or either of them?

Waters. The prisoner stood by the table, as I came into the room.

L. C. J. Was the sword in the scabbard that was broke?

Waters. It was out, and please you, my lord.

L. C. J. Whose sword was it?

Waters. It must be the deceased's, because the other had his sword with him in his hand drawn. I saw the blood: I desired the constable to draw the sword, and I saw it bloody a good way.

Mr. *Peters* sworn.

Serj. *Cheshire.* Mr. Peters, will you tell my lord and the jury, whether on the 17th of October last you was sent for, and by whom?

Peters. On the 17th of October last, I think it was in the forenoon, about 12 o'clock, I was sent for to visit Mr. Lutterell; the messenger told me he lay expiring: I came into his room, where I found him on his bed, in a wounded condition, and languishing of his wounds; he seemed desirous, that I would pray to Almighty God for his soul, for he believed he had but a little time to continue in this world, and therefore he desired to make the best use of it; I was ready to assist him; and desired him to consider how far he might be instrumental in bringing this misfortune on himself. I desired him to consider, that as a dying man great weight would be laid on his words, therefore if he said any thing not strictly true, he might involve innocent people in the guilt, and the punishment: therefore I desired him to lay his hand upon his heart and consider.

He told me, "As a dying man, as he expected to be tried for this very fact at the bar of heaven, as well as the persons who had injured him, he assured me he was murdered in a barbarous manner."* Afterwards came in

* Concerning the admissibility as evidence in cases of murder of the dying declarations of the deceased person, Mr. East (Pleas of the Crown, c. 5, § 124), says, "Besides the usual evidence of guilt in general cases of felony, there is one kind of evidence more peculiar to the case of homicide, which is the declaration of the deceased, after the mortal blow, as to

one Church, a bailiff in the same street, and desired me to put it home to him: I did; upon which he made me the same answer, "That he was barbarously murdered;" he wanted spirits, or would have expressed himself more fully: on this I prayed by him, and when I had done, I took my leave of him. In about an hour afterwards I was sent for again; when I came there, I met Mr. Vernon and Mr. Haynes, justices of the peace; one of the justices gave Mr. Lutterell his oath, and there being no clerk there, desired me to take his

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the fact itself, and the party by whom it was committed. Evidence of this sort is admissible in this case on the fullest necessity; for it often happens that there is no third person present to be an eye-witness to the fact, and the usual witness in other felonies, namely, the party injured himself, is gotten rid of. But in order to preserve, as far as possible, the purity and rectitude of such evidence, it must appear that the deceased at the time of making such declarations was conscious of his danger; such consciousness being considered as equivalent to the sanction of an oath," [and as not greater; therefore if the testimony upon oath of any person (as of an attainted convict) would not be received, so neither shall his dying declaration. See George Drummond's Case, Old Bailey, September Sessions, 1784. Leach's Cases in Crown Law.—Upon the same principle, it may be conjectured, that the dying declarations of a person, of whom it should be proved that at the time of making them, he did not believe in a future state of moral retribution, would not be received], "and that no man could be disposed under such circumstances to belie his conscience: none at least who had any sense of religion. But such consciousness need not have been expressed by the deceased: it is enough if it might be collected from circumstances, and the Court are to judge of this consciousness previous to the admission of this sort of testimony."

In conformity to this last position, it appears that in Margaret Tinckler's Case, Durham, 1781, (cit. East Pl. Cr. ub. sup. from MS. Gould, J. and MS. Crown Cases reserved) the question, whether her declarations were made under a consciousness of her danger, was upon a respite of execution referred to the determination of the judges.

And again, in Thomas John's Case, Carmarthen Spr. Sess. 1790, (cit. East Pl. Cr. ub. sup. from MS. Buller, J.) the Court was of opinion, that the evidence of the state of the wife's health at the time the declarations were made was sufficient to shew that she was actually dying, and that it was to be inferred from it that she was conscious of her situation: and no particular direction was given to the jury on the subject. The jury having found the prisoner guilty, this point was (among others) referred to the judges, who at a conference in Easter Term, 1790, all agreed that it ought not to be left to the jury to say whether the deceased thought she was dying or not; for that must be decided by the judge before he receives the evidence.

And again, in Henry Welbourne's Case, Lincoln Summer Ass. 1792, (cit. East Pl. Cr. ub. sup. from MS. Buller, J.) though at the trial the judge, (Ashhurst, J.) left it to the jury to consider, whether from the whole of the evidence they were satisfied that the deceased, at the time she made the declarations, was convinced of the danger of her situation, yet upon a reference to the judges in Michaelmas Term, 1792, they all agreed, that whether the deceased thought herself in a dying state or not, was matter to be decided by the judge in order to receive or reject the evidence, and that that point should not be left to the jury.

It is not stated from what principle this doctrine was deduced, which is to be regretted, since it may be thought that the question, whether at a given time a person did or did not think that his death, was at hand, is a mere question of fact, perfectly distinct from any point of law, and perfectly free from any matter of legal inference; and accordingly in the case last cited, it has appeared, that at the trial the judge left the consideration and decision of it to the jury. So, too, in the Case of William Woodcock, who was tried at the Old Bailey, January Session, 1789, before Lord Chief Baron Eyre; present Mr. Justice Ashhurst, and Mr. Serjeant Adair, Recorder. (See Leach's Cases in Crown Law). The judge, noticing a doubt, whether a certain examination upon oath, taken by a magistrate, of the deceased, was such a deposition as could be read under the statutes of Ph. and M. expressed himself as follows: "My judgment is, that inasmuch as she was mortally wounded, and was in a condition which rendered almost immediate death inevitable, as she was thought by every person about her to be dying, though it was difficult to get from her particular explanations as to what she thought of herself and her situation, her declarations, made under these circumstances, ought to be considered by a jury, as being made under the impression of her approaching dissolution; for resigned as she appeared, she must have felt the hand of death, and considered herself as a dying woman. She continued to repeat the facts she disclosed, rationally and uniformly, from the moment her senses returned, until her tongue was no longer capable of performing its office. Declarations so made are certainly entitled to credit; they ought therefore to be received in evidence: but the degree of credit to which they are entitled must always be a matter for the sober consideration of the jury, under all the circumstances of the case."

As to the respective provinces of judges and juries, see vol. 6, pp. 967. 992. Bushell's Case, 999. 1012; the modern prosecutions prior to the Libel Act (stat. 32 G. 3, c. 60), and particularly the Case of Francklin, A. D.

words in writing, which I did; the words were these; "The bailiffs took the pistols from my table; they fired them twice; the fat man drew his sword; and run me into the body with his sword; and then drew my sword, which I broke in his hand, and begged for life; I neither fired a pistol nor made one push; they both run me through; I offered to pay them the money." I think these are the very words he said. After this I prayed by him again, and still desired, that he would not lay any thing to the charge of people that were

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1731, in this Collection. See, too, vol. 8, p. 36; vol. 11, pp. 372, 373.

The Statutum Walliæ expresses, 'De Officio Coronatoris;' "Eritque officium ejus, quod statim postquam ab aliquo requisitus fuerit veniendi ad videndum mortuum interfectum per feloniam, vel submersum, aut quocunque alio modo mortuum per infortunium; et etiam ad videndum hominem enormiter vulneratum, de cujus vitâ desperatur; quod statim mandabit vicecomiti vel ballivo commoti, quod venire faciat coram eo certo die et loco omnes duodecim annorum et ultra, de villâ illâ in quâ casus contigerit et de quatuor villatis propinquioribus, et quod per eorum sacramentum fidelitèr, cautè et secretè, ac diligentèr inquiret de felonià, de felonibus, et eorum catallis, similiter de facto, et de modo facti, videlicet quis fuerit culpabilis de facto, quis de vi, et cujus modi vi, quis de præcepto, seu missione, quis etiam de receptamento post factum, et de catallis eorundem hominum qui per inquisitionem inde culpabiles inventi fuerint."

"This branch of duty" (the attendance and summoning a jury in case of any person's being so severely wounded that his life is despaired of) "in a coroner," says Mr. Barrington, "is now totally neglected, as his proceedings are only 'super visum corporis:' it is a regulation however which deserves much to be revived. And I should conceive that this attendance of a coroner with a jury when a dangerous wound had been received was to prevent the dying words of the person murdered from being evidence" [quere the precise meaning of this,] "as this kind of proof though allowed at present cannot be too cautiously admitted. It is presumed indeed that the words of a person expiring cannot but be true, considering the situation under which he gives the information. But may not a dying man, though a good Christian, deprived of expected happiness in life by a wound received perhaps from an enemy, rather wish his punishment more eagerly than he should do? and may not those about the dying person, who are generally relations, repeat what he hath said more strongly on his trial, than possibly the words were delivered?" Observations on Statutum Walliæ.

Concerning the admissibility, under the Scots law, of evidence of Dying Declarations, I find the following passage in Mr. Hume's 'Commentaries' respecting Trial for Crimes, vol. 2, pp. 227, *et seq.*

"In cases of murder, our judges have always admitted evidence of the dying declaration of the deceased, even though purely verbal, and still more if reduced into writing by any creditable person, with respect to the manner and guilt of his death; justly considering that such material testimony, and given on so trying an occasion, is of some weight in the scale of evidence and sound reason, as a circumstance and presumption of guilt, though not to be received certainly as of equal value with an oath emitted before the assize. This doctrine has the sanction of many precedents in various forms. In the case of William Ross, February 16th, 1719, the interlocutor sustains this, among other articles of presumption against the pannel, 'And upon carrying the pannel to the defunct's house, he the said defunct, when on death-bed, upon seeing the pannel, did declare that he the said pannel was the person who gave him the wound.' The libel against George Donald, August 4th and 11th, 1730, relates, 'at least at the time and place aforesaid, the said deceased Robert Stewart received a wound in the belly, of which in a short space he died, and upon the noise made by the firing of a pistol, one of the neighbours running immediately into the said house, saw him the said George Donald, with a pistol in his hand, which was smoking, and fire on the breast of the said Robert Stewart's clothes, and having opened them, saw ane wound bleeding, and heard the said Robert Stewart say, that he the said George Donald had shot him.' Testimony was given to this material circumstance, notwithstanding the opposition made to it by the pannel. Indeed, in such cases, the dying declaration is properly a part of the fact, or story.

"The indictment of Norman Ross, makes the like charge in these words: 'And she being yet able to speak, declared to the persons present, that he, (Norman Ross) was the person who had done that bloody deed, and directed them to look for the knife, which was accordingly done, and found behind the bed, besmeared with blood:' And these things went to proof without objection. The like was allowed in the trial of Nicolas Cockburn, August 18th, 1754, for poisoning her stepmother: A surgeon who attended the deceased, and Mr. Dundas of Arniston (afterwards lord president of the court of session,) who had acted as a justice of peace on the occasion, deponed at large to the account which the deceased, in her illness, had given them, of the violent and sudden manner in which she was taken ill; of the pannel having prepared breakfast for her; of the various shifts and subterfuges which she used to avoid detection; and in short, of her whole grounds of belief, that the pannel was the cause of her death. There is another case of murder by poison, August 9th and 12th 1755, that of Andrew Wilson, who was tried for poisoning his wife; and there the libel

not guilty: I left him then, and came again a third time, and as I was praying by him, he interrupted me, and asked me, If it was not proper to receive the holy sacrament, which he was desirous to do: I asked him, if ever he had received the sacrament; he told me he had; I desired him to consider, and to assist him I put him into a method; I told him one thing which was necessary, which perhaps he might come into with reluctance, and that was charity and forgiving his enemies. I told him he had been hardly dealt with I believed, yet it did behove him, as he died a Christian, to forgive them: he told me he did forgive them, and he hoped Almighty God at the last day would forgive their indiscretion; he died some time afterwards, but then in so dosing a condition, that I could not attend him to any purpose.

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bears the like impeachment of the pannel, by the deceased upon her death-bed, thus: 'And likewise, your said wife, during her said last illness, did, in the presence and hearing of several persons, express strong suspicions of your having poisoned her with the said drink.' Last of all, I may appeal to the noted trial of Mungo Campbell, February 26th, 1770, where Mr. Moore, the surgeon who attended lord Eglinton on his death-bed, gave evidence of his dying declaration, with respect to the occasion of his receiving the mortal wound.

"Although, from their nature, cases of murder are the most frequent, they are not, however, the only cases, in which this sort of evidence may be employed, as appears from what passed in the trial of James Macgregor, August 3d, 1752, for the abduction and forcible marrying of Jean Key. After being recovered out of the pannel's hands, and placed with a relation of her own, that unfortunate young woman had on the 20th of May, of her own accord, gone into the presence of two of the judges (the lord justice-clerk and lord Drummore,) and had privately related to them the story of her sufferings, which was duly taken down in writing; and she had afterwards, in presence of the Court, confirmed and publicly adhered to this declaration. But at this time she was in an infirm and languishing condition, in consequence of the grievous outrages which she had suffered; and she died before the libel was raised against the author of her distresses. To supply, therefore, as far as might be, this material defect, the prosecutor libelled on these declarations of her's, as meaning to produce them by way of evidence in the trial. Accordingly, after hearing counsel, the Court allowed them to be used as circumstances of presumption against the pannel; and they were again produced August 6th, December 27, 1753, in the trial of Robert Macgregor, the associate of James in this atrocious enterprize.

"As testimonies of this sort may thus serve to strengthen the case against the pannel, so may they doubtless be referred to on his part, with equal credit, as far as they are favourable to his defence. Such an appeal was made, and profitably too, in the trial of Samuel Hale, a soldier, who had accidentally shot his comrade, Garret Rochford, in the course of some sport that was going on between them. It was given in evidence that the deceased, when supported in the pannel's arms on his death-bed, bare testimony in his favour, thus: "That he verily believed that Samuel Hale, pannel, knew not that the piece was loaded, and that he freely forgave him, and stretched forth his hand and kissed him, and said he believed he meant him no harm, and that the same was accidental.' Hale, in consequence, had a verdict of acquittal. Though not attended with the same benefit to the pannel, the like evidence in a written form was allowed in the trial of John Downie for murder, December 12th, 1774, who produced the dying declaration of the deceased, taken down before witnesses, by the minister of the parish. In one instance, and I believe in one only, a pannel had been allowed to avail himself of a testimony of a more unusual kind. In the trial of Alexander Reid, a revenue officer, for murder, March 15th, 1784, he founded on the declaration before a magistrate, of John Farquharson, also a revenue officer, and one of the same party, who had likewise been accused of the murder, but was now dead. But this of allowing a deceased culprit indirectly to give evidence for another culprit on his trial, cannot be considered any otherwise than as an extraordinary indulgence, which was owing only to the lord advocate's consent, given on account of the particular circumstances of the case."

In Aveson *v.* lord Kinnaird, 6 East 188, it was held that in an action by the husband upon a policy of insurance on the life of his wife, made by her when lying in bed apparently ill, stating the bad state of her health at the period of her going to M—— (whither she went a few days before, in order to be examined by a surgeon, and to get a certificate from him of good health preparatory to making the insurance) down to that time, and her apprehensions that she could not live ten days longer, by which time the policy was to be returned, are admissible in evidence to shew her own opinion, who best knew the fact of the ill state of her health at the time of effecting the policy, which was on a day intervening between the time of her going to M——, and the day on which such declarations were made: and particularly after the plaintiff had called the surgeon as a witness, to prove that she was in a good state of health, when examined by him at M——; his judgment being formed in part from the satisfactory answers given by her to his enquiries.

And in the same case, lord Ellenborough mentioned a case of an action upon a bond, in which Mr. Justice Heath permitted evidence to be received, that the attesting witness had in his dying moments begged pardon of heaven for having been concerned in forging the bond. See, also, Wright *v.* Littler, Barrow, 1955, cited by lord Ellenborough.

Mr. *Hungerford.* Did he say any thing about who fired the pistol?

Peters. I mentioned it to him; when I asked him, if he had fired either of the pistols, I told him one of the bailiffs was wounded, and that there were two balls taken out of his hand; he assured me, as he was a dying man, he fired neither of the pistols.

Reason. Did not he confess that he had broke one of their heads?

Peters. No, he did not say he broke one of their heads, nor any thing like it; so far from that, that he said he did not design to hurt a hair of their heads.

L. C. J. I think, Mr. Peters, you say, when you came there you met with two justices of the peace, Mr. Vernon and Mr. Haynes, and because they had no clerk there, they desired you to take the examination.

Peters. Yes, my lord, I did take it.

Serj. *Cheshire.* My lord, I apprehended we had it ready to produce, or else I had not opened it; but upon my calling for it, I am told, to my surprize, that Mr. Vernon hath it, and he is gone into the country.

Peters. I have a copy of it.

L. C. J. We must have the original.

Peters. My lord, there is a copy of it in my deposition before the coroner.

L. C. J. Is Mr. Haynes here?

Mr. *Haynes* called.

L. C. J. You have given an account of the examination of this gentleman, first before the clergyman, afterwards before two justices of the peace, his examination is taken and reduced into writing, and if it was reduced into writing, by the rule of law, unless you shew you are disabled to do it by some accident or other, you must produce that writing.

Mr. *Reeve.* I am very much surprised, I apprehended they had the writing ready in Court to produce. My lord, Mr. Haynes will inform you.

Mr. *Haynes* sworn.

L. C. J. Mr. Haynes, we have been informed by that gentleman that stands before you, the minister, that upon hearing of this unhappy accident, you and one of your brethren, Mr. Vernon, came there in order to enquire into the matter, and take the examination of the prisoners; did you do it?

Haynes. My lord, on the 17th of October last, the prisoners at the bar were brought before me, and charged with the murder of Mr. Lutterell; I understood Mr. Lutterell was not actually dead, so Mr. Vernon, another justice of the peace, went with me to Mr. Lutterell's lodging, and there we found him in a very weak condition, but sensible; we administered the oath, in order to take the information in form; Mr. Vernon and the minister were there; my hearing not being good, Mr. Vernon examined him; but before they could perfect his examination in form he fainted away, and could not go on: then we went to my house, where the prisoners were, and examined them, and afterwards committed them. What the deceased said to Mr. Vernon and the minister I did not hear, so can give no account of it.

Mr. *Reeve.* Had you a paper taken?

Haynes. There was a paper taken, but it was imperfect.

Mr. *Reeve.* And I think that is not in your custody, had you the paper?

Haynes. No, I had it not.

Mr. *Reeve.* Do you know where it is?

Haynes. No, I do not.

Peters. I gave it to Mr. Vernon, and obtained it of him to shew the coroner, and afterwards I gave it him again; I took a copy of it.

L. C. J. The copy you took is from the paper produced to the coroner.

Mr. *Reeve.* You were examined before the coroner?

Peters. I brought the original paper to the coroner.

Mr. *Reeve.* Whether that, which is mentioned in your affidavit before the coroner, was a copy from the original paper?—*Peters.* Yes.

Mr. *Reeve.* And did you examine it?

Peters. Yes.

L. C. J. We must have the original.

Mr. *Hungerford.* We hope we may have liberty to read the deposition taken before the coroner, if what the gentleman says be so; he saw the examination taken in the presence of the justices of the peace, and the very paper, the words of the paper, are contained in the deposition taken before the coroner.

L. C. J. That won't do, you have not the examination of the deceased. This is ill done of Mr. Vernon, he ought to have taken care, and attended here, and had the examination before the Court, and without that we cannot arrive at the truth of this case; I doubt you must lay aside all the evidence of this gentleman for want of the original examination.

Mr. *Reeve.* We must submit it to your lordship, as to the confession, that part of it that is not contained in the examination, which was not proposed to him at the time of his examination, whether that is not evidence; there are two or three things he gives an account of, that he said before it was reduced into writing. But suppose we cannot have the benefit of the examination, yet the discourse that was had with the deceased at another time, whether we may not be admitted to give that in evidence, we must submit it to your lordship. But suppose no examination had been taken, we humbly apprehend what he said would be proper to lay before the jury. Therefore when he gives an account of what he said at another time than that of his examination, though we cannot produce what he said at the time of his examination, yet we may give in evidence what he said at other times. There were two other times which he gives an account of, the first was, when he was sent for to pray by him, and one Church came in; he then declared on

the words of a dying man, he was barbarously murdered.

L. C. J. You know in the court of Chancery, when the party is examined on his oath, he gives in a first answer; and on exceptions taken to it, he gives in a second, and so a third; all these are taken but as one answer and entire confession of the party.

Mr. *Reeve.* Here is not an examination before a proper officer.

L. C. J. You are to be heard no more to it, because you ought to produce it.

Mr. *Reeve.* I am sure it is a surprize on all of us.

Mr. *Hungerford.* As to us, we have the very confession in our brief, and I believe, if we had thought it could not have been produced, we should not have opened it.

L. C. J. And there is too an examination in print; that ought not to be, and the person that did it ought to be censured; are juries to be prepossessed; here is a printed pamphlet, whereof the title is, Mr. Lutterell's Cry for Justice.

Mr. *Hungerford.* I never saw it, but am told it is most in favour of the prisoners at the bar.

L. C. J. If the examination is true, it ought to be produced, and the prisoners ought to come fairly to their trial, and, if guilty, God forbid but they should suffer, but not by passionate insinuations in print; and it is an unprecedented thing, and if it comes out who did it, I shall take a course with them: it is a way of preventing all manner of justice.

Mr. *Hungerford.* No doubt it is a very unjust thing, and unwarrantable, no more to be justified, than officers are, when, under the colour of justice, they shall murder a gentleman at his own lodging: but as to the case in Chancery, first, second, and third answers are but one answer. I speak it with all deference, whether that be the same case, the words that he did deliver at other times, when the justices were not present, when he was a dying person on the brink of eternity, and then said the same words; and now this paper cannot be produced, whether the words of the paper may not be admitted as evidence, we humbly submit it to your lordship; and we believe the witnesses will give you an account of what he said at other periods of time, when there was no examination in writing, which was only when the justices attended.

L. C. J. Give an account how it comes to pass, that you have not this examination to produce, that was in writing?

Mr. *Mitchell* sworn.

Mr. *Reeve.* Will you give an account of this paper, and whether there hath been any application made to get it, and why it is not here?

Mitchell. I called at Mr. Vernon's, but they told me he was gone into the country, and he had not fixed any one place, which he not doing, they did not know where to send to him.

L. C. J. Here is a printed narrative goes about the town. Do you know who was the author of that?

Mitchell. No, my lord, we have been enquiring in order to prosecute the person; I have asked the widow, and Mr. Keat her nephew, and they say, they know nothing of it.

Mr. *Hungerford.* It sets out with this fact, that the deceased struck first; and if so, it is very reasonable to suppose, that this paper was done rather in favour of the prisoners at the bar, than of the prosecutors.

L. C. J. The justice of peace that had not the examination doth appear, but he that hath it is out of the way. Mr. Peters, how many times was you with the deceased?

Peters. Three times; at 12 o'clock, about an hour after, and about an hour after that, the third time.

L. C. J. When was it you reduced what he said into writing?

Peters. The second time; the third time I administered the sacrament.

L. C. J. And when you examined him the first time, and afterwards a second and third time, the design of that was to perfect the examination which you took the first time, and then it is all of a piece.

Mr. *Hungerford.* My lord, the third examination was after the taking any thing in writing; when he took the sacrament on the solemn occasion, he declared, &c.

Just. *Powis.* The last examination, therefore, was an advice to a forgiving temper.

Just. *Eyre.* Mr. Peters should declare what he said the first and third time.

Peters. I pressed him to consider and recollect whether what he had said was true; he said it was.

Just. *Eyre.* What did he say the first time?

Peters. The first time he told me, "he was barbarously murdered:" As I told you before, there came in one Church a bailiff, and then I put him to consider, whether he was not accessary to his own misfortune; to which he returned the same answer, "That he was barbarously murdered, that he did not draw his sword, nor fire his pistol."

L. C. J. Did you ask him about any blow, or provocation given?

Peters. I asked him, to which he said, "He did not design to touch a hair of their heads."

L. C. J. I must confess, for my part, I am not entirely satisfied: Mr. Peters at his first coming examines him, and after that he comes to him a second time, and then he is examined in the presence of two justices of the peace, and by their authority; and he says the intent of that was to perfect the first examination; and being so examined a second time, his examination is taken in writing; whether or no the first and second do not make an entire examination, and so that you cannot produce the first without the second; I make no doubt it might be produced, if there had not been a second; but he that examines him first, examines him afterwards a second time, in order to perfect that examination, and when he doth

it, it is reduced into writing: to me it seems a matter of great consequence, if the first is allowed without producing the second.

Just. *Eyre.* It cannot properly be called an examination.

Mr. *Hungerford.* The first time he examined him as a christian, as a minister; as to the second examination, Mr. Peters had no more to do in it than a justice's clerk.

L. C. J. The examination taken before the justice, was to confirm the former examination, and upon that examination all was reduced into writing.

Just. *Eyre.* That which is set down in writing if it be an examination taken in writing, of a prisoner before a justice of the peace, you cannot give evidence of that examination *viva voce*, unless the examination be lost; but what declaration or confession was made at any other time, may be given in evidence; the particular examination of what he said before the justices, and was reduced into writing, cannot be proved but by that writing; but as to what he said at any other time, the first and third time, and not before the magistrates, that may be given in evidence.

Just. *Powis.* The great matter I observe is, that Mr. Peters did say, he did look upon the second examination to perfect the first, the first was not so perfect, and then it was to be ascertained by a second, and which they not caring to trust to their memory put into writing; that writing indeed the justice of peace hath; it is not produced, but if it be agreed that it was put into writing, and after it was reduced into writing, it seemed to be all of a piece, so as plainly to relate to what was done the time before, how will they ascertain the whole, but by producing the writing? Then this writing cannot be seen, the justice of peace hath it, and doth not come here to produce it.

Just. *Eyre.* I do not know how to call this perfecting the former examination, you cannot call the discourse between him and Mr. Peters, an examination, when there was no justice of peace present; it is not an examination what passed between Mr. Peters and this gentleman. It is always taken so at the Old Bailey, where evidence is allowed to be given *viva voce*, of what was said by people at other times besides the time of examination.

Just. *Powis.* What doth Mr. Peters mean by perfecting the examination?

Peters. I beg your pardon, it was not my word.

L. C. J. Not to differ about words, whether this is an examination before the minister, when the justices of peace was not there; it is very likely this minister came to enquire of this gentleman about the circumstances of his death: after that, the same gentleman is present when the justices of peace come; thereupon the justices of peace desire him to take it in writing; he asks the same questions as he did before, and they are taken in writing; he takes it, designing to make the first examination more authentic to charge the person that gives the examination. Now, really, when all this is done, the examination of him before the justice, taken in writing by the same person that enquired of him before, and all this done in order to perfect and consummate the examination, whether you will not take them both together as one entire account given by the deceased? He gives the account, he gives it as true in the presence of the justice; they were not present the first time, but the same person that asked him the first time, he asks him when the justices were there, if what he said before was true, and on that an account is taken in writing; now upon this, when there is an examination in writing in the presence of the same person, and when they give you no reasonable excuse why they do not produce it, there ought to be the less credit given to them.

Just. *Eyre.* I think there is the less credit given, because the examination is not produced; however it is evidence.

Just. *Powis.* If they were both of equal validity you say something, but it is confessed on all hands, that the second examination was more solemn and valid, because two justices of the peace were present, and there was the awe of magistracy over the person; and the second examination relates to the first.

Just. *Fortescue.* It is a hard case on the prisoners at the bar; it is the confession of Mr. Lutterell, and if they had that in evidence, they might be compared together; but they not having that, I own, as to point of law, they cannot give it in evidence: it is a great hardship, but where it lies I cannot tell; I think it ought to be censured in a proper time. The most material of what is said by word of mouth is detained from us, and not produced; but I think we should allow what was said at other times to be given in evidence, because the first is no examination, because no justice of peace then present; so that the examination stands distinctly by itself, and that evidence is to be laid aside and not produced; but shall we not allow that to be evidence which he said at other times, because he had an examination taken in writing? Therefore we shall hear no other evidence, the first was no examination, only what Mr. Peters will take upon him to say passed between them.

L. C. J. Go on with your evidence.

Mr. *Hungerford.* There can be no doubt of the third declaration; my lord, the third examination was certainly the most honest examination; as to the second examination, it had the solemnity of two justices of the peace, one happens to be deaf, the other to be absent; whether what a man says just as he is going to die, and on his receiving the holy sacrament, is not to be regarded?

Just. *Eyre.* He should distinguish between what passed in the first discourse, without any regard to what is contained in the second examination.

Mr. *Recve.* Mr. Peters, you hear the opinion of the Court, that what passed at the writing of this paper you must not take any notice

of, but give an account of what passed at my other time.

Peters. I told your lordship before, I was sent for to visit him the first time, when I found him dangerously ill; after I had talked to him some time to put him in mind of death, I desired to know of him, how far he had been any way instrumental or accessary to bring this misfortune upon himself; he said, "As he was a dying man, and expected to be judged at the last day, they murdered him barbarously." I repeated it to him again at the request of Mr. Church a bailiff, and the last time I came to him, when he received the sacrament.

L. C. J. Mr. Peters, I desire you to consider with yourself, did you not ask him whether he had struck any of the bailiffs?

Peters. I did not.

L. C. J. Did you ask him if he had given them any provocation?

Peters. I did; to which he answered, "He had given them no provocation.

L. C. J. Did you ask who gave the first blow?—*Peters.* No, I did not.

L. C. J. Did you see the wound; did he say he gave that?

Peters. I told him, it appears one of the bailiffs is wounded in the hand, and it is probable he was the person that discharged that pistol; upon which he assured me, "He fired neither of the pistols; he neither drew his sword, nor fired either of the pistols."

L. C. J. When you had this discourse with him, did you reduce it into writing?

Peters. What I reduced into writing, was only my deposition, which I writ with my own hand, and which Mr. Justice Harper swore me to, and I believe he hath it in his custody.

L. C. J. Here this gentleman is allowed to give an account of what discourse passed between him and Mr. Lutterell the first time; the justice of peace cannot be allowed to give an account of what is said at his other examination, because it was reduced into writing, and that writing cannot be produced.

Mr. Reeve. I beg you would give an account of what he said at any other time, when this paper was not written: when you talked with him about this matter, you say he said, "The bailiffs did barbarously murder him without any provocation;" that he said, "He gave them no provocation;" and when you asked him about the wound that one of the bailiffs had, he said, "He fired neither of the pistols, nor drew his sword;" I desire to know at any other time, whether there was any thing material passed between you at any other time than at that time when the paper was wrote: Can you recollect?

L. C. J. You discoursed him three times, the first you have given an account of, the second time it was reduced into writing, that writing doth not appear; what passed the third time, pray repeat it again?

Peters. As he was going to receive the holy sacrament, I begged of him to consider whether what he had said was true: he said, "Every article he had said, as he was a dying man, and as he hoped to receive benefit by the sacrament, every thing he had said, was strictly true."

Mr. Reeve. We shall trouble your lordship with one evidence more, that is the surgeon, who will give you an account of his wounds.

Mr. *Sparham* sworn.

Mr. Reeve. I think you was sent for as a surgeon; give an account in what condition you found the deceased, how many wounds, and of what nature?

Sparham. I found him labouring with a wound under the right pap with a shot; upon this I examined him, and putting him into a proper posture, found several other wounds: one near the liver, the lower part of the eighth rib, near the back-bone; several other wounds with a sword, three or four on his belly. Upon opening of his body I found that the wound with the bullet had penetrated about nine inches towards the back, which wound was mortal, the first to be of the lungs, having a hole through, and the second to be torn, and the diaphragma wounded: I found one other wound with a sword near the eighth rib, three inches and a half broad, penetrating the thorax, and wounding the diaphragma, which was also mortal: I found eight other wounds with a sword about a quarter of an inch wide each, and a quarter of an inch deep, one near the left pap, four others on the right side of the belly, two more on each side the back bone.

Mr. Reeve. So you looked upon two of the wounds to be mortal, one whereof was with the pistol-shot.

Sparham. Yes; I saw two leaden pieces taken out of his body.

Mr. Strange. Who attended at the same time?—*Sparham.* Mr. Gifford.

Mr. Strange. Did he or you take out those bullets?

Sparham. We both took them out, I think.

Mr. Reeve. My lord, we have done.

L. C. J. What say the prisoners? The counsel for the king have called what witnesses they think proper, it is now your time to answer for yourselves.

Reason. If your lordship please, we arrested the gentleman in Surry-street, and he desired me to go to his lodging; when we came there, he said he would pay the money; says he, "Go and see for the attorney, and I will pay the money;" upon that Tranter went to the attorney for his bill; I went up stairs with the gentleman into the dining-room; when he came up, says he, "My dear, I am arrested, it is for Mr. Rous's bill." He began to look a little angry: with that he went to his scrutore and took something out of it, a key, and he went up stairs and fetched his pistols, and when he came down again, he clapped one to my breast, and threatened to shoot me; I was surprised; his lady runs out of the room; with that I gave him good words; says he,

"Sirrah, I will let you live a little till your partner comes back, and then I will send all your souls to hell together:" then the foot-boy came back and said, the gentleman was coming; he ordered the boy out of the room, and one knocked at the door; when the boy was gone, he clapped his pistols, one on one side of his bosom, and the other on the other, and my partner came, and when he came into the room he gave him a blow over the head; with that he closed in with him, and then one of the pistols went off and wounded him; then he drew his sword, and I drew mine, and then the other pistol went off, which was the occasion of his death.

L. C. J. Have you any witnesses?

Mr. *Twine* sworn.

Twine. My lord, I was employed by the plaintiff, Mr. Carr, to take out a writ against Mr. Lutterell, on an indorsed note; I did take out a writ and gave it to Mr. Reason, and he got the warrant upon it, and afterwards came to me, and desired to know where Mr. Lutterell was to be found, and that I would describe him to him, whether young or old, &c.? I told him where to go, and described him to them; then they went and arrested him, and after he was arrested Tranter came to me, and told me the next morning, they had taken the captain: they said they took him at the lower end of Surrey-street, and that he was very angry, and said they had not used him civilly.

L. C. J. What Tranter said, is not evidence.

Twine. I know no more, my lord; Tranter came to me for the bill, and I gave him a bill of the debt and charges.

L. C. J. Did you give the bill of the debt and charges to Tranter?

Twine. I did; he told me they had just taken the captain, and then I gave it him; the bill of charges was 1*l.* 13*s.*

Mr. *Tims* sworn. The warrant shewn to him.

Tims. This is the warrant made out upon the bill of Middlesex, at the suit of Mr. Carr, to arrest the deceased. [The warrant read, and also the bill of Middlesex produced and read.]

Mr. *Hickman* sworn, and the warrant shewn to him.

Hickman. This I know to be my hand, I made out this warrant all of it.

Mr. *Hungerford.* I would humbly offer it to your lordship's observation, here is a fact we have omitted to prove; here is a witness in court, one Lucas, can prove that Reason shot off the pistol.

L. C. J. It is irregular; but although you have omitted it, and come out of time, I would have the whole fact, and if my brothers please we will hear it.

Constance Lucas sworn.

Mr. *Hungerford.* Mrs. Lucas, what do you know of shooting off the pistol?

Lucas. I was opposite to the captain's lodging in Surrey-street, in a room up two pair of stairs, and I heard a pistol go off, upon that I went to the window, and I saw a lusty fat man take a pistol out of the window in the captain's lodging up one pair of stairs, and let it off towards the fire-side.

Mr. *Strange.* Do you know Mr. Lutterell?

Lucas. Yes.

Mr. *Strange.* Can you take upon you to say it was not Mr. Lutterell?

Lucas. Yes, I am sure it was not he.

L. C. J. When you saw a lusty fat man take a pistol off from the window, and discharge it, was any body by him at that time?

Lucas. Nobody that I saw.

L. C. J. What sort of man was Mr. Lutterell?

Lucas. He was a little man.

One of the Jury. Was there any light in that room to distinguish one man from another?

L. C. J. What she said was, she saw a lusty fat man come to the window, and take up a pistol, and discharge it, and that she saw nobody else at the window.

Mr. *Hungerford.* The coroner's inquest came into this room, and was satisfied, that from thence she might see into this window.

Mr. *Gifford* the surgeon sworn.

Gifford. On Tuesday the 17th of October last, about ten or eleven o'clock, I was sent for to a gentleman, Mr. Lutterell: when I came to him, I found him sitting on a chair, and he leaned back with his shirt and clothes very bloody; Mr. Sparham was with him, in order to look to his wound; we put him to bed, we found a wound about an inch below the right pap, by gun or pistol shot, and we dressed it, and all the other wounds we could find; I went into the parlour, and there were the two prisoners at the bar; I was told one of them was wounded; upon that I went to examine into it: upon coming into the parlour I examined Tranter, and there I found two pieces of balls which were lodged in his hand; we extracted the balls; I found a small wound in his wrist, and a razure on his head; that was a small wound which was on the wrist; it seemed to be from a prick, something that had entered the skin. Then I went to Mr. Lutterell again, as he was in a good state of sense: I asked Mr. Lutterell, "Whether he had fired a pistol?" I asked him several times; he denied it a first, second and third time, and he used this expression, "I call God to witness, I neither fired a pistol, nor drew my sword, but was barbarously murdered." I was there again, when Mr. Peters gave him the sacrament, when he was asked the same question; he then answered, "He neither did the one or the other." In the afternoon Mr. Keat and I went together, he was then in a calm state, seemed reasonable, and we asked him, "Sir, you can give some account of this matter, your reason and judgment are strong; I have heard that you fetched down the pistols:" he told me, "He had, but with

no malicious design, only he would not be forced out of his lodgings." I asked him, "If there was any blow given:" he said, "They had given him abusive language, which induced him to strike one of them; upon that they immediately seized him, the lusty man seized him and drew his sword; he tumbled down, and he stabbed him; he often begged them to spare his life; the other said, Damn him, draw his own sword and stab him." Mr. Lutterell's finger and thumb were cut, as if it was with grasping of a sword. Then he said, "The lesser man took a pistol and clapped it close to his breast, and shot him in the body, and the lusty man held the other pistol to his head, and shot it off;" which I the rather believe, because he had some powder spots or marks on his face.

Reason. He owned to you that he struck one of us.

Gifford. Yes; but it was upon your giving saucy language.

L. C. J. When you asked him about bringing down the pistols, and upon what account, what said he?

Gifford. He acknowledged he brought down the pistols, but with no evil intent; but as he was willing to pay his debts, he was not willing to be forced out of his lodging, and be exposed.

Mr. *Bonner* sworn.

Bonner. My lord, just as Mr. Lutterell was got to bed I came up stairs, and asked him, if he had fired the pistol; he disowned it, and said, "He had no design to do them any harm, or make any resistance, but," said he, "they killed me cowardly and cruelly."

Reason. After that he had declared to you that he had no design to make any resistance, what followed?

Bonner. When I came out of the room, says Mr. Gifford to me, "Mr. Bonner, Mr. Tranter is shot in the hand; it is certain Mr. Lutterell shot him in the hand; therefore let us go back and ask him;" we went and asked him both of us, and he said, "No, as God should judge him, he did not, nor had he any design of doing them any harm, but he did threaten them several times." He spoke inwardly and seemed to be faint, and desired we would leave him.

Reason. Please to take notice that my partner is shot in the right hand.

Tranter. My lord, I have lost the use of my thumb.

Blake the surgeon sworn.

Blake. My lord, Mr. Tranter was wounded in the thumb of the right hand, and in his left he had a wound here in his wrist, I did not take the ball out of his hand, but I dressed it.

L. C. J. What was that blow on his head? what do you think it was done with?

Blake. It seemed to be done with a cane.

L. C. J. Was it a wound or a bruise?

Blake. A wound, the skin was broke. Mr. Reason had a little wound in one of his fingers, which seemed to be done with the point of a sword.

Thomas Hargrave called again.

L. C. J. Hark you, young man, hear the question, and consider well; upon your former examination you say, when Tranter knocked at the door, you went down to let him in; that Tranter made up to the dining-room, and you followed him; you heard a little bustle before you came in; but the first thing you saw, when you came, was Tranter running your master against the closet door, and Reason pricking him with a sword: I ask you this question, whether or no, when you was going up stairs after Tranter, before you entered the room, you did not hear a blow?

Hargrave. I heard a blow, but did not know who struck it.

Just. Eyre. Did you see to whom the blow was given?

Hargrave. No, I saw nothing at all of it.

L. C. J. The reason of my calling him again, was to be satisfied as to this particular; for the coroner informs me, that before him, he had swore to the same effect; he answered hastily before, but I believe not with any design; he said he did not hear any blow, his meaning then might be, though he did hear a blow, yet not seeing who gave it, therefore he thought it not material; I did not believe he did it with any design.

L. C. J. Have you any other witnesses?

Reason. My lord, we had none but ourselves, we are officers of the Court; he assaulted us, and brought down his pistols and stuck them in his bosom.

L. C. J. Did he not afterwards take them out and lay them on the table?

Reason. No, my lord.

Tranter. While I was gone, I did not know what happened, but when I came back, the minute I entered the room he struck me over the head with his cane, and the pistol went off, and shot me in the hand.

The clothes were produced, and by the hole in the waistcoat it appeared, that the wound given by the pistol under the right pap could no way happen by any position of the pistols in the bosom of the deceased, by the pistol going off of itself.

Reason. My lord, we are officers of the Court, and what we did was for our own security.

L. C. J. What says Tranter?

Tranter. My lord, we have no more to say.

Mr. *Reeve.* My lord, I beg leave to observe a few things by way of reply. They have endeavoured to differ the case with respect to three particulars; the first particular is with relation to the blow given by Mr. Lutterell; they say Mr. Lutterell himself being pressed very much, did own that he had given one of the bailiffs a blow on the head; there appears Reason to think that to be true, because the surgeon says he dressed him of a wound re-

ceived by a blow with a cane; we submit it, whether that is a sufficient justification of the officers for what followed, to kill Mr. Lutterell in this manner, supposing it to be true. What the boy says, he saw afterwards, immediately upon his coming into the room, in an instant, as soon as he heard the blow, he found Mr. Tranter running him up against the wainscot, and the other bailiff stabbing him; he swears Mr. Lutterell had then no sword or stick in his hand, so that whether or no, after the bailiff had received a blow on his head, it will be a justification sufficient for the bailiffs to murder him? Another part of the evidence is in relation to the bringing down of the pistols; I beg leave to observe, my lord, he did confess that the pistols were brought down, but not with an intention to do them any prejudice; that he laid them on the table; they do not pretend Mr. Lutterell fired either of them, but in the struggle, the pistols were in his breast, and there they went off of themselves. One wounded the prisoner, the other went into his own breast. As to what is said with relation to the intention of Mr. Lutterell, he did own he did threaten them: If he did, yet he had no power over the pistols, one was on the table, and the other was in the window, and they say the pistols were not fired by any of them: Our witness, the maid-servant, just a little before the pistols were fired off, saw Mr. Lutterell on the ground upon his back, and his hands lifted up, and them stabbing him, and this before any one of the pistols went off; there is another witness swears expressly, she saw a fat man take a pistol out of the window, and fire it towards the chimney: Mr. Lutterell was not a fat man, so it must be somebody else that fired the pistol, and not Mr. Lutterell, in all probability. It was Mr. Reason, as to the evidence given in relation to the clothes, because here is a hole in the waistcoat, the pistol that was in his breast must go off of itself, and make that hole. It can be no such thing, the jury has seen the clothes, and where the wound is given, and in what position Mr. Reason himself hath attempted to place the pistols, and it is impossible the pistols should go off, and give that mortal wound. We submit it to your lordship's discretion upon the whole, whether it is a sufficient justification, though they are officers of justice, and ought to be protected, yet suppose such a misbehaviour where there is no necessity for it, they are not to be justified.

L. C. J. There will be two points in law; the one is, whether the officers are to be justified in what they have done? If they have done nothing but what was proper to secure their prisoner; and their own lives when they were assaulted, they are not guilty of felony; and if they are guilty of felony, then of what degree, whether of murder or manslaughter.

Mr. Reeve. My lord, we must submit it, whether a man striking another over the head be a justification for him immediately to kill him, and take it with this circumstance; that they had given him ill language.

L. C. J. Is ill language a justification for blows? Besides you will consider, whether there was not ill language on the other side.

Mr. Hungerford. My lord, I will not take up much of your lordship's time, if your lordship will spare me a word or two. Here is a man's life taken away by two persons, that had a precept from a court of justice to arrest, the only thing they had to do, was to secure the person, to make him answerable to justice, whether that could not be done without this outrage? Whether officers of justice may execute their process with so much cruelty? It amounts to as great premeditated malice as can be conceived. There is a malice contained in cruelty; I need not mention the matter; it hath been fully laid before you; I shall only mention a precedent or two; one is that of Holloway's case:* There was something of a provocation; but the judge there in that case did enter into the fact, whether the provocation was sufficient to justify the killing of the boy. The boy was stealing wood in his park, and had a rope about his middle, and as he was up in a tree, he bid him come down out of the tree, and he took hold of the rope and dragged him so, that he was killed; and this was not a sufficient provocation. Another case is that of Mawgridge†, it is reported by my lord chief justice Holt, there was a provocation; Cope had desired Mawgridge to go out of the room, and then turned him out of the room; and there the turning him out of the room was not a sufficient provocation, and it is a very just observation of my lord chief justice Holt; when cases are attended with so much cruelty and barbarity (as appears to be here, here are nine wounds, eight besides that with the pistol on the same person, and certainly two lusty men as the prisoners at the bar are, might have made him answerable to justice without any such barbarous treatment). The observation my lord chief justice Holt made, is, that the law should be so construed. As to the business of the clothes, it seemed to be absurd that the pistol went off, and made that wound on the right side; by no position he could put the pistols in, could their going off make that wound.

Mr. Strange. My lord, I would only observe two or three things. If Mr. Lutterell, at the time they assaulted him with a sword, had held his pistols in his hand, and their own lives had been in danger, the case had been different: but when he had put the pistols out of his hand, and they were between him and the pistols, so that it was impossible for him to do them any such harm (for I do admit if it was in Mr. Lutterell's power at that time, and he had shewed an intention, that if they did not kill him, he would kill them, that might be

* Croke Charles, 131. Palm. 545. 1 Jones, 198.

† Kelyng's Reports, 119. Holt 484. See it in this Collection at the end of the Trial of James Carnegie, A. D. 1726.

something of a justification), they are the less excusable in doing what they did. As to the circumstance of the pistols firing of themselves, as they were in Mr. Lutterell's bosom, and so giving this wound, it seems to be impossible it should be so, and that this must be a wound given by a pistol levelled directly at him.

L. C. J. I think you mentioned the case that is in Keilyng, and if you have read that case lately, you will remember, there a blow is a provocation, and if a blow be first given, it will not be murder, though death do ensue upon it.

L. C. J. Gentlemen of the jury, the prisoners at the bar, Hugh Reason and Robert Tranter, are charged by the coroner's inquest, and by an indictment, with the murder of Mr. Lutterell; they say they are not guilty of this murder; and whether they are guilty or not is your business to enquire, and receive satisfaction in. In order to prove them guilty, they have called several witnesses for the king. The first is Thomas Hargrave, who it seems was a servant to Mr. Lutterell; he tells you, that upon Tuesday, but he doth not remember the month, or the day of the month, but it comes out from the other witnesses, that it was the 17th day of October, he says his master was going down to the water-side in order to take boat, for it seems he lodged in Surry-street, and he says a little man ran after him, and clapped him on the back. He did not then know him, but now says his name is Tranter; on that his master told him, he would pay the money. He did differ in the evidence he gave, at first he did not remember that he desired them to go to his lodging, but he desired them to go with him to Westminster. But the officers thought that was not reasonable; then afterwards he says, that with much persuasion he prevailed with them to carry him back to his lodging: and that the officers did carry him back to his own lodging; he says, his master went up stairs, he followed after; when he came up stairs his master demanded of the officer, that was with him, the fat man, which is Reason (for Tranter was gone to get a bill of costs from the attorney), he demanded of the officer his warrant; the officer did shew him his warrant; he said, he took the warrant in his hand, and afterwards threw it on the ground, using a very indecent expression, he should take it and wipe his backside with it. He tells you while he was there somebody knocked at the door; with that he went down to open the door, and he says he let in Tranter, and he ran up to the dining room, and he followed him. Now, he says, on his second examination, before he came into the dining-room, he did hear the noise of a blow given, formerly the lad giving his evidence hastily, and not so well considering, he said he did not hear any blow given; but on his second examination, he doth say he heard a blow given before he came into the dining-room. He says, when he came into the dining-room, Tranter had got hold of Mr. Lutterell, and was pressing of him against the wainscot, and that Reason had his sword drawn and was striking at him with his sword; and he says, as he was preparing himself to make another thrust, he took hold of his sword-arm, and prevented that, and Reason with some passion said, "Damn you, get you out of the room, or else you shall die before your master." With that the boy went out of the room, and went down stairs and cried out fire and murder, in order to alarm the neighbourhood; he tells you while he was there he heard a pistol go off, and before he could get up stairs he heard another pistol go off; this is the evidence given by Hargrave. They have called another witness, Hester Gerrard; she says she heard her master go out in the morning, and a little time after she heard him return again, and there came with him Reason one of the prisoners at the bar. Observing this, that her master came in so short a time after he went out, she had the curiosity to hearken what the meaning or occasion of her master's returning so soon was; she says she heard her master talking of an arrest, and he seemed to be in a passion with the bailiff that was with him, and said he had not used him well, but should have given him notice before he arrested him in the street; she says, she withdrew afterwards into her mistress's bed-chamber, which were near the room where they were, and in a little time she heard her master go up stairs, and in a short time after return again; with that, she had the curiosity to go in, and see what was the matter; her mistress being big with child she was therefore more curious than ordinary to prevent the misfortune falling on her mistress; she found her master with two pistols in his hand, he stuck one of the pistols on one side, and the other on the other side in his coat; she says, she admonished her master, and desired him to consider the condition of her mistress, and not to do any thing to fright her; upon that he said the bailiffs had affronted him, and abused him, and called him Minter, however he did not design to do them any harm with the pistols, and her master, at her desire, laid down the pistols on the table; with that she went out of the room; but soon after hearing a great noise she came into the room again, and found her master on his back on the floor, and the bailiffs stabbing him: she says she went out with an intent to give notice of it to the neighbourhood, and that she cried out murder; that while she was doing this, she heard one pistol go off, and presently after another; but before either went off, she saw her master lying upon his back, and the prisoner at the bar (pointing at him) stabbing him. Then they call Thomas Waters, a waterman, he was standing by the water-side, and seeing Mr. Lutterell coming down, who was one that usually employed him, he expected a fare from him, and that he should carry him, as he usually did; he saw Mr. Lutterell make back again and go into his own lodging; but still he said he expected his master to come down, and go by water; but he not coming in so short a time as he expected, he made towards his lodging,

and as he came near he heard the boy cry, Fire and murder: he went up into the room, where he found Mr. Lutterell lying in the room wounded, all in blood. The next witness is Mr. Peters, who is a reverend divine, and came to do his office and duty on this melancholy occasion: he hearing Mr. Lutterell was wounded, and in danger of dying, came to him to perform his office on that occasion: he says, that he requested and admonished him to tell him, if he was not accessary to his own misfortune, and that it may be, if it was not discovered whilst he was living, it might be the occasion of an innocent person's suffering. When he admonished him to tell the truth, he did with the most solemn asseveration, as he was to answer at the dreadful day of judgment, say, "That he was barbarously murdered;" but did not you give any provocation or occasion for it? "No, I gave none." With that, says he, I told him I understood one of the bailiffs was wounded with a pistol; did not you discharge either of the pistols? "No, upon the word of a dying man, and as he was to answer it to Almighty God, he never discharged either of the pistols, nor did he run his sword at them, drew his sword at them, or give them any provocation." The minister says, he advised him to be very serious, and examined him as to the fact, and said it would be of very dangerous consequence, if he should die with any falsity in a case of this nature, and it would draw present ruin on innocent persons; he said, "He never drew his sword, nor discharged either of the pistols, but was barbarously murdered." Mr. Peters then went away, and a little time after came again, when Mr. Vernon and Mr. Haynes, two justices of the peace, came to take an examination from Mr. Lutterell himself; he says he was present at that time, that because they had no clerk with them, he was desired to take an account in writing of what was said; he pressed him as formerly, and having taken an account in writing, that ought to be produced, but it is not produced, and therefore no regard is to be had to it, for a person is to give the best evidence the thing is capable of, especially where a person's life is concerned, and he of his own shewing, says, it was taken in writing, and that writing is not produced, and no account is given that they are disabled to produce it, but the justice of the peace that hath it is out of the way; and it doth not appear, that proper endeavours have been taken to have him here, that this examination might appear more perfect than the former. He tells you afterwards he came to him a third time, and the end of his coming a third time was to admonish him with respect to his fate in the other world, and at that time he desired to take the sacrament; he told him what was necessary; that he might take the sacrament worthily, and that it was proper above all things that he should discharge himself and his conscience, and give a true account of what happened on this melancholy occasion, that so no innocent person might suffer. He still insisted, "That he was barbarously murdered," and said, "that every article of what he had said was true." He said to him further, "before you receive the holy sacrament, and as you are going before God, and there hope to have remission of your sins, it is necessary for you to forgive even your enemies;" and with that says he, he told me, "He did heartily forgive all the world, and did forgive the persons that had been guilty of this indiscretion, and hoped God Almighty would forgive them:" he gives it a soft term there, their indiscretion. Indeed I should have been very glad if the examination that was reduced into writing was here, that it might be laid before you. Mr. Peters is a very worthy person, there is no reason to doubt; but he swears upon his memory, and when a man swears upon his memory, he may mistake, and the mistake of a few words may alter the sense; therefore it was very proper to have had the examination here; that might possibly have corrected his memory; and though he hath shewed himself a man of great probity and worth, yet he might be mistaken in some particular; and it seems strange, that of two justices of peace the one appears, and the other, Mr. Vernon, with whom the examination is left, doth not appear, nor any endeavours used to have him here; and therefore it must be taken as an objection, not as to his veracity, but that the prosecutor hath not produced the evidence that is proper, and only relies on the memory of the witnesses, and this seems to affect the evidence that is given by Mr. Peters. They have called another witness, whom they called at last after they had closed their evidence; she lived in an house over against Mr. Lutterell's lodgings; she was in a chamber two pair of stairs, and she saw a lusty fat man come to the window, take up a pistol, and as she thought discharged the pistol; and she saw no other person but this man, and therefore concluded the fat man fired the pistol: this is the evidence given for the king. The prisoners are asked what they have to say for themselves, in answer to this charge, which seems to be a weighty one given against them: they tell you they are ministers of justice, and they give you an account, not only by their own opening, but by the evidence they have produced, in what manner they behaved themselves; that upon the first arrest, at the request of the prisoner that then was, they submitted to carry him back to his own lodging: I must confess this doth seem to make some impression, it is what bailiffs are not bound to do, they are usually rough, and not easy to be intreated, unless well paid for it; this shews, that these men went beyond the bounds of their own duty; for when they had arrested him, they ought to have secured him by carrying him to jail, or some place of safety; it was incumbent on them to give him an opportunity of paying the money, or sending for bail, in case he desired to be discharged that way; but when a bailiff hath arrested a man, to carry

him back to his own lodging, is an unusual way of treating prisoners, and ought not to have been; but still it is not to be imputed to the bailiffs, as an aggravation in the charge, they were too favourable in trusting him in his own lodging. What is next? When they had him there, Tranter is sent for the attorney's bill. This is pretty extraordinary, when they had taken him, not only to give him leave to go to his own lodgings, but one of them goes upon an errand, which Mr. Lutterell might have sent his own servant upon, and leaves none but Reason; this was extreme civil usage, and not often done by men of their character. What then? Lutterell goes up stairs. What did Reason then do? When he had carried him to his own lodging and sent his partner away, he gives him leave to go into another chamber; this doth not seem to be ill treatment of the deceased, but shews excessive favour to their prisoner, which they could not in strictness justify: he went up stairs and returned again, and the maid-servant of Mr. Lutterell tells you, she saw him with a case of pistols, one stuck on one side of his coat, and the other on the other; if their treatment was so extraordinary and civil, this seems to be an untoward return of Mr. Lutterell's, when he was trusted to go out of the room, for to return with a case of pistols; but the maid-servant says, he said, "He had no malice towards them, and would not hurt a hair of their heads, he only brought down the pistols that he might not be imposed upon." I do not know what he meant, when he was in custody of the officers, and had been so civilly used, to bring down a case of pistols to prevent his being ill used, seems an untoward return, and to affright the officers, that they might not carry him away. This is not all, Mr. Gifford says, that he being a surgeon was called to give his assistance on this very unhappy accident; he gives an account of the wounds, and the discourse that passed on that occasion, and upon what he had done, and how the bailiffs had treated him. Says he, "I confess," although he says he had examined, and asked him several times before, and that he refused to give any account then, but did persist in it, that he did not give any provocation, but at last when Mr. Gifford repeated it with some earnestness, out it comes at last, "That he did give one of the bailiffs a stroke on his head with a stick." He goes on, and asked him the intent of bringing down the pistols; he says, "I did not design any harm; I have no malice, but brought them down, that I might not be ill used:" this was ill behaviour, where he had been treated civilly, to declare that he brought down his pistols, that he might not be ill used: it was the duty of the bailiffs to carry him off, and he brought down his pistols to prevent that; as to the blow, says the bailiffs, the assault began on his side; the young man hath told you he heard a blow given: Mr. Lutterell declared, he brought down the pistols to prevent their carrying him off, and that he did give one of the bailiffs a blow with a cane; it is surprizing, that immediately when Tranter came back he should run him against the wainscot, and the other assault him with a sword; this behaviour is not of a piece with the other, that Tranter should come back, and without any provocation run him against the wall, and Reason should take his sword and stab him: there must be a provocation; the boy says there was a blow given, but he cannot tell who gave it. Mr. Lutterell declares he gave a blow, and another surgeon confirms it; so that it appears beyond contradiction, by the evidence, that the pistols were brought down with a design to prevent his being carried off, and that he did give one of the bailiffs a blow with a stick: then Mr. Bonner hath given you an account of several matters; but that which is material is, that he did not discharge any of his pistols, or draw his sword; that he did not intend it, but did threaten it several times. One Blake, who was another witness, says, that upon examination afterwards there appeared, that there had been a blow on the head of Tranter. This is the nature of the evidence given on the side of the prisoners. Upon the whole matter, I think it is plain beyond contradiction, that the prisoners at the bar did kill Mr. Lutterell. It is plain that first of all, when Tranter had him against the wall, that Reason stabbed him, and when lying upon the floor, that Reason stabbed him; and it appears afterwards by the evidence of the witness, who says she saw the fat man take up the pistol and discharge it, that Reason shot off the pistol; so that I think there can be no doubt at all, but the prisoners at the bar did give these wounds, of which he died. The surgeons give an account, and I think there are some eight or nine wounds with a sword, one of them only mortal; a wound with a bullet that is mortal; several other wounds he speaks of, that are but slight. Then the question will be, whether upon this evidence the defendants are guilty of felony, and if guilty, then in what degree, whether of murder or manslaughter? Gentlemen, it hath been opened truly, that the bailiffs are ministers of justice,*

* "Bailiffs, or sheriffs' officers, are either bailiffs of hundreds, or special bailiffs; bailiffs of hundreds are officers appointed over those respective districts by the sheriffs, to collect fines therein; to summon juries; to attend the judges and justices at the assizes, and quarter sessions; and also to execute writs and process in the several hundreds. But, as these are generally plain men, and not thoroughly skilful in this latter part of their office, that of serving writs, and making arrests and executions, it is now usual to join special bailiffs with them; who are generally mean persons employed by the sheriffs, on account only of their adroitness and dexterity in hunting and seizing their prey. The sheriff being answerable for the misdemeanors of these bailiffs, they are therefore usually bound in an obli-

they are armed with the authority of law, and those who resist a bailiff in the execution of his office, resist the law. They are not bound to give way and let their prisoner escape, but they being to execute their warrant, if in doing what is necessary for this purpose, for obtaining their prisoner, and the security of their own persons, death doth ensue, the bailiffs, having the authority of the law on their side, it is not so much as felony; and it is very necessary it should be so, for without it all our properties would be precarious. When any man offers an injury to another, there is no remedy but by bringing an action at law, and in order to bring the person to do justice a proper officer must be employed; and therefore it is highly reasonable that bailiffs should have an authority to carry off the persons they have arrested, and if in doing of it death ensues, the party must thank himself. That being the question, I would recommend to your consideration these circumstances; it appears in the beginning, that the bailiffs treated Mr. Lutterell with all civility, gave him leave to go to his lodging; one of them sends his companion away, and gives him leave to go up stairs; but although they did do that, that will not justify them for being guilty of any barbarity, without any just occasion offered; therefore you are to consider what happened afterwards: It appears Mr. Lutterell brought down the pistols, he did do this to prevent his being carried off: that is, to prevent the bailiffs from carrying him from his lodgings, which was their duty to do in case the money was not paid, or bail given in; and if so, this is good introductory evidence to that, which they offer to prove, namely, that he endeavoured to rescue himself: He says, he did not discharge either of the pistols, or draw his sword upon them; that he did not intend to do any mischief, but he threatened them; then see how this is when taken together: Here is Mr. Lutterell under an arrest, fetches down his pistols with an intent to prevent his being carried off; I doubt his threatening must have reference, that he threatened to discharge his pistols, or draw his sword upon them; then when his pistols are brought down with that intent, when he threatens what use he would make of his pistols or sword, what is done afterwards? Mr. Lutterell gives one of the bailiffs a blow with his cane; it is proved undeniably that there was a blow given, that is proved by the boy, that the blow was given by Mr. Lutterell; that appears by what he owned himself. Then consider, here are pistols brought down with a design to make opposition; that he threatened them, and not only so, but gave one of them a blow with his cane; what is the consequence? Tranter runs him against the wall, and Reason stabs him: If this were all that was in the case, when pistols are brought down, and threatenings used, and a blow given, the officers are not to stand still till they are murdered, nor could they tell what Mr. Lutterells intention was: As he had made an appearance of resistance, and had made an assault, you are to consider whether this was not a necessary defence of the officers to secure their prisoner. It is of no weight what Mr. Lutterell said, that he intended to do them no harm; if he made an appearance of resistance, and actually assaulted them, the question is, whether the bailiffs, in this case, are not justified in what they have done? You will consider their circumstances. The maid tells you, when the pistols were brought down, at her persuasion her master laid them on the table; so one would think that was an indication that no ill use was intended to be made of them: It doth not appear whether one or both were in the reach of Mr. Lutterell. Then it appears, that notwithstanding the running him against the wall, he had in some measure rescued himself from that force, and there was a struggling, and throwing down, which shews this man was not so in the power of the bailiffs, so as they could be secure of preserving their prisoner, or their own lives. It must be left to your consideration, whether there was any design of Mr. Lutterell to rescue himself; but if you think they had a just provocation, and they had reason to be apprehensive of losing their prisoner, the law does allow them to do what is necessary for their own security, and the security of their prisoner. This is what I recommend to your consideration, whether or no it appears to you that this was done out of heat, and out of a passion by the bailiffs, when there was no just cause for them to apprehend the prisoner's being rescued; if you believe that, then the prisoners will be guilty of felony: But if you believe there was just occasion for the prisoners to be apprehensive they were in danger of their lives, and of losing their prisoner, then whatever is done in their own defence to secure their prisoner, and their own lives, it will not be felony. I must confess it looks barbarous to think, that when a man was in his blood on the ground, they should follow their blows, giving him more wounds; this is carrying the thing a great way, and it looks like some barbarity; but if Mr. Lutterell gave the first occasion, whatever happened after, if done for the security of their own lives, and of their prisoner, will not make

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gation for the due execution of their office, and thence are called bound bailiffs; which the common people have corrupted into a much more homely appellation." Bl. Comm. b. 1, ch. 9, (vol. 1, p. 345.)

I suspect that in this passage the ingenuity of the learned commentator has misled him into an erroneous refinement concerning the 'homely appellation;' which, I conjecture, was originally the name given to the bailiff's underling (or 'follower' as he is still called), whose office it was to 'follow' the party arrested, and, if necessary, to assist from behind in forcing him forward. In France this personage is (at least was) styled 'pousse-cul', and, I believe, carried a goad.

them guilty of felony; but suppose you should be be of opinion that the bailiffs have done more than they should, then the next thing to consider is in what degree they are guilty: It appears a blow was given, and that by the boy, before he came up stairs; it appears by Mr. Lutterell that he gave the blow; Gentlemen, I do not know, men of honour are not to justify themselves by saying saucy language is given them, and therefore I am to be my own avenger; Mr. Lutterell gave one of them a blow over the head, afterwards the rest fell out as you have heard.

The question is, whether it be murder? It must be done maliciously, and without provocation, or else it is not murder: Blows have always been allowed to be provocations, and here this is accompanied with fetching down the pistols, threatening the bailiffs what he would do, and afterwards giving one of them a blow; and if so, the defendants will not be guilty of murder, but only of manslaughter: First you are to assert a just and true authority of the bailiffs; on the other side you must not encourage the bailiffs on a few angry words immediately to fall into a passion, and take away the life of a man. Here it appears, that a blow was given under untoward circumstances, after the bailiffs had been threatened with a design to prevent his being carried off by them; and if it be so, the most you make of it will be manslaughter.

They did behave themselves civilly at first, shewed him their warrant, which he threw down and bid them wipe their back-side with it; that is a matter which if this gentleman had not suffered in the manner he hath done, must have been resented in its place; then two or three times they are called rogues and rascals, and that might provoke the bailiffs: I think this unhappy business was occasioned by too great a lenity of the bailiffs in carrying back their prisoner to his own lodging; that was not well done of them. However, I must leave it to your consideration, whether or no they are guilty of felony, and if they be guilty of felony, then in what degree, whether of murder or manslaughter. I forgot one thing, the surgeon did swear that one of the bailiffs had a wound in his hand by a bullet, each of them had a wound, though it doth not appear how; all this is likewise to be considered: you will consider the whole, and give your verdict accordingly.

Reason, as hath been proved, said, he hoped he would give him civility money; he said he would give nothing to such rogues as they were, for they had given him no notice, but had arrested him in the street; that is the great ground of complaint, and at that the offence is taken; they did not give him due notice, therefore it was not civilly done, which if they had done, and it had come before us, we should have punished with great severity.

Upon this the Jury withdrew, and after staying out about an hour, brought them both in Guilty of Manslaughter: Upon which they prayed the benefit of the clergy, and were immediately burnt in the hand.

From sir James Burrow's Report of John Taylor's Case, it appears that the sentence of burning in the hand was executed upon Reason and Tranter behind the bar of the Court of King's-bench. See 5 Burr. 2797.

The execution of capital convicts who are in custody of the Marshal of the King's-bench, is usually done at St. Thomas-a-Waterings in Surrey. See 1 Strange 553; 4 Burr. 2089, John Royce's Case.

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462. The Trial of John Woodburne and Arundel Coke, esq. at Suffolk Assizes, for Felony, in wilfully slitting the Nose of Edward Crispe, gent.* 8 George I. A. D. 1722.

On Tuesday the 13th of March, 1722, at the assizes held at Bury St. Edmonds, in the county of Suffolk, John Woodburne and Arundel Coke were arraigned upon an Indictment found by the grand jury: And the Court proceeded thus:

Clerk of the Arraignments. John Woodburne, hold up thy hand; Arundel Coke alias Cooke, hold up thy hand. (Which they severally did.)

You stand indicted by the names of John Woodburne, late of the borough of Bury St. Edmonds, in the county of Suffolk, labourer; and Arundel Coke alias Cooke, of the borough aforesaid, esq. for that you, after the 24th day of June, in the year of our Lord 1720, viz. the first day of January in the 8th year of our sovereign lord George, of Great Britain, &c. intending one Edward Crispe, gent. then and yet being a subject of our said sovereign lord the king, to maim and disfigure at the borough aforesaid, in the county aforesaid, by force and arms, &c. in and upon the said Edward Crispe, in the peace of God, and of our said sovereign lord the king, then and there being, on purpose, and of malice aforethought, and by lying in wait, did unlawfully and feloniously make an assault. And that you the said John Woodburne, with a certain bill value a penny, which you the said John then had and held in your right hand, the nose of the said Edward Crispe, on purpose, and of your malice forethought, and by lying in wait, did then and there un-

* See East's Pleas of the Crown, ch. 7, sect. 2, *et seq.*

lawfully and feloniously slit, with an intent by so doing, the said Edward Crispe to maim and disfigure. And that you the said Arundel Coke, at the time of the felony aforesaid, by the said John Woodburne in manner aforesaid, unlawfully and feloniously done and committed, to wit, the said first day of January, in the 8th year aforesaid, at the borough aforesaid, in the county aforesaid, on purpose, and of your malice forethought, and by lying in wait, unlawfully and feloniously was present, aiding and abetting the said John Woodburne the felony aforesaid, in manner aforesaid, feloniously to commit and do. And so the jury aforesaid, upon their oaths say, that you the said John Woodburne and Arundel Coke, the said first day of January, in the 8th year aforesaid, at the borough aforesaid, in the county aforesaid, by force and arms, &c. on purpose, and of your malice forethought, and by lying in wait, the felony aforesaid, in manner aforesaid, did, and each of you did, commit and do against the peace of our sovereign lord the king, his crown and dignities, and also against the form of the statute in that case made and provided.

The Latin copy of the Indictment is as follows:

DOMINUS REX *v.* COKE ET WOODBURNE.

Suffolk, ss. Jur' pro Dom' Rege super sacrament' suum præsentant, quod Johan' Woodburne, nuper de Burgo de Bury Sancti Edmundi in com' Suff', Lab', et Arundel Coke, alias Cooke, nuper de Burgo prædt', Arm', post 24 diem Junii, anno Dom' 1721, scil' 1 die Januar', anno regni Dom' Georgii nunc Regis Magnæ Britan', &c. 8, machinantes quendam Edw' Crispe, Gen', adtunc et adhuc existen' subdit' dicti Dom' Regis nunc, mahemare et deformare, apud Burg' prædt' in com' prædt', vi et armis, &c. in et super prædt' Edw' Crispe, in pace Dei, et dicti Dom' Regis adtunc et ibid' existen', ex proposito (Anglice 'on purpose') ac ex malitiis suis præcogitat', et per insidias (Anglice 'by lying in wait') illicite et felonice insult' fecer'. Et quod prædt' Johan' Woodburne cum quadam Secure (Anglice 'a bill') valor' un' denar', quam ipse idem Johan' in manu sua dextra adtunc et ibid' habuit et tenuit, pasum præfat' Edw' Crispe ex proposito ac ex malitia sua præcogitat', et per insidias, adtunc et ibid' illicite et felonice fidit (Anglice 'did slit') cum intention' ad eund' Edward' Crispe ita faciendo modo prædt' mahemand' et deformand'. Quodque prædt' Arundel, tempore felon' prædt', per præfat' Johan' Woodburne, modo et forma prædt', illicite et felonice commiss' et perpetrat', scil' eod' 1 die Januar', anno 8 suprad', apud Burg' prædt' in com' prædt' ex proposito ac ex malitia sua præcogitat', et per insidias, illicite et felonice fuit præsens, auxilians, et abettans præfat' Johan' Woodburne ad felon' prædt', in forma prædt', felonice committend' et perpetrand'. Et sic Jur' prædt' dicunt super sacrament' suum prædt', quod prædt' Johan' Woodburne, et Arundel, dicto 1 die Januar', anno 8 supradict', apud Burg' prædt' in com' prædt', vi et armis, &c. ex proposito ac ex malitiis suis præcogitat', et per insidias, felon' prædt' in form' prædt', illicite et felonice commiser' et perpetraver', et uterque eor' communsit et perpetravit, contra pacem dicti Dom' Regis nunc, coron' et dignitat' suas, necnon contra form' stat' in hujusm' casu edit' et provis'.

Clerk of the Arraigns. How sayest thou, John Woodburne? Art thou Guilty of the felony whereof thou standest indicted, or Not Guilty?

Prisoner. Not Guilty.

Cl. of Arr. Culprit, How wilt thou be tried?

Prisoner. By God and my country.

Cl. of Arr. God send thee a good deliverance. How sayest thou, Arundel Coke alias Cooke, art thou Guilty of the felony whereof thou standest indicted, or Not Guilty?

Prisoner. Not Guilty.

Cl. of Arr. Culprit, How wilt thou be tried?

Prisoner. By God and my country.

Cl. of Arr. God send thee a good deliverance. You John Woodburne, and Arundel Coke alias Cooke, the prisoners at the bar, hearken to what is said to you. Those good men that are now called and do here appear, are those that are to pass between our sovereign lord the king and you, upon your several lives or deaths; if therefore you, or either of you, will challenge them or any of them, you must challenge them as they come to the book to be sworn, before they are sworn, and you shall be heard.

Cl. of Arr. Cryer, give the book to

Thomas Buckingham,	George Cross,
Nicholas Alger,	Samuel Bridge,
Ambrose Gallant,	Jonathan Clements,
George Goddard,	Thomas Taylor,
Robert Gall,	Simon Reeve,
William Scott,	William May.

Cl. of Arr. Count these.

Cryer. Are you all sworn, Gentlemen?

Jury. Yes.

Cl. of Arr. Make a Proclamation.

Cryer. O Yes! If any of you can inform my lord the king's justice, the king's attorney or solicitor general, of any treason, murder, felony, or other misdemeanour committed by the prisoners at the bar, or either of them, come forth, and you shall be heard, for the prisoners at the bar now stand upon their deliverance: And all persons bound by recognizance to prosecute them, or either of them, come forth and prosecute, or you will forfeit your recognizances.

Cl. of Arr. John Woodburne, and Arundel Coke alias Cooke, hold up your hands. Gentlemen of the jury, look upon the prisoners, and hearken to their charge: they stand indicted by the name of John Woodburne, late of the borough of Bury St. Edmonds, in the county of Suffolk, labourer, and Arundel Coke alias Cooke, of the borough aforesaid, esq. for

that they (as in the indictment before-mentioned) upon which indictment they have been arraigned, and pleaded severally Not Guilty: your charge is to enquire whether they, or either of them, are Guilty of the felony whereof they stand indicted, or Not Guilty.

Mr. Lee. May it please your lordship, and you gentlemen of the jury, I am of counsel for the king against the prisoners at the bar, who are indicted for felony on the 22d and 23d Car. 2, entitled, "An Act to prevent malicious Maiming and Wounding." And the indictment sets forth, that the prisoners, the 1st day of January, in the 8th year of his present majesty, at Bury St. Edmonds in this county, did on purpose, and of malice fore-thought, and by lying in wait, make an assault unlawfully and feloniously upon Edward Crispe, gent. and that the prisoner, John Woodburne, with a bill which he then had in his right hand, did on purpose, of malice fore-thought, and by lying in wait, slit the nose of the said Edward Crispe, with an intent in so doing to disfigure the said Edward Crispe; and that the prisoner, Arundel Coke, at the time of committing the said felony, on purpose, and of his malice fore-thought, and by lying in wait, was unlawfully and feloniously present, aiding and abetting the said John Woodburne to commit the said felony: all which is laid to be done contrary to the form of the statute. If we who are counsel for the king prove this matter, you will find them Guilty.

Serj. *Selby.* May it please your lordship, and you gentlemen of the jury, I am counsel, *pro hac vice*, for the king against the prisoners at the bar, who stand indicted upon the statute of the 22d of king Charles 2, the one for maliciously maiming and disfiguring of Edward Crispe, the other for abetting that fact, which by that act is made one and the same offence; I said, gentlemen, I was counsel for the king, for that his majesty, as the father of his people, and for their safety, out of his natural goodness, hath been graciously pleased particularly to regard this prosecution for so horrid and bloody an assassination. And though, gentlemen, it is difficult to stand in this place without the greatest tenderness to our fellow-creatures, yet those who have divested themselves of all humanity, now cease to be such; it is even cruelty to the king's people not to stand up against them so far as is consistent with law and justice. Their prosecution is become the common concern of mankind; for so long as these prisoners have a being here, the life of every man is precarious, and but at the will of so infernal a contriver as the one, and so hellish an executioner as the other. We shall first, gentlemen, prove the fact committed, and that by Mr. Crispe himself, who by a particular providence hath survived this horrid attempt, and is here to give evidence of it, and that he was invited with his wife by Mr. Coke (who married Mr. Crispe's sister, and who was to have Mr. Crispe's estate by his decease) to sup at his house; that Mr. Coke proposed to him to go after supper to make a visit to Mrs. Monke (whose name we mention without any the least imputation) to which Mr. Crispe consented; that Mrs. Monke's house opens into the church-yard, which is but cross the way from Mr. Coke's house; that Mr. Coke took Mr. Crispe along with him about ten or eleven at night, it being dark, into the church-yard, and walked him about near Mrs. Monke's door without going in, and then making some noise or whistling, a person came up to him and knocked him down, after which he was not sensible; that being left for dead, after some time he got up, and returned, he did not know how, to Mr. Coke's house, where the company received him with great consternation, as did Mr. Coke himself, who soon returned after walking out with Mr. Crispe, out of breath, and called for a glass of wine; and being asked what was become of Mr. Crispe, said he was stumbling home in the dark. This we shall prove by Mr. Brown, another relation. We shall prove by Mr. Sturgeon, who was called as his surgeon, the condition of his wounds; and by Carter, a blacksmith, that Mr. Coke about the Friday before the fact was committed, sent for him, and asked (after a previous discourse of Carter's poverty, and how he might live well in the world) if he would cut off ten mens' heads without remorse; which, when Carter said he could not, if he would cut off one man's head, and lay it before Coke; which Carter refusing, Mr. Coke bid him consider on it, and come again; then gave him a glass of brandy, and dismissed him, bidding him send Woodburne to him. We shall prove by one Moone, a tailor, that Mr. Coke about three years since solicited him to the like effect. We shall prove by Willet the constable, that after Woodburne was taken up, he confessed the fact, said he did it with a hedging-bill, and gave him directions where to find it, and he found it accordingly; which Woodburne, when shewed him, acknowledged to be the same, and which we have here to produce. We shall prove by Mr. Wetherell the gaoler, that Mr. Coke, since he was in his custody, confessed the whole fact, and that Woodburne was placed in a porch of an empty house near Mr. Coke's, to come out on a whistle to do the fact; and that he delivered Mr. Crispe to Woodburne, and was present when the fact was committed. And after this evidence, there can be no doubt, gentlemen, but you will find the prisoners at the bar Guilty of this indictment.

Serj. *Branthwaite.* My lord, the defendants are indicted of felony, upon an act of parliament, made 22 and 23 Car. 2, by which act, if any person or persons on purpose, and of malice fore-thought, and by lying-in-wait, shall unlawfully cut or disable the tongue, put out the eye, slit the nose, &c. with an intention in so doing to maim or disfigure; the person or persons so offending, their counsellors, aiders and abettors, knowing thereof, are felons without benefit of clergy. The indictment charges the

defendants with feloniously making an assault on Mr. Crispe; that Woodburne slit his nose with a bill or hook; that Coke was aiding and assisting therein. We shall be able by undoubted evidence to prove and make clear the charge of the indictment, and every particular thereof; as has been opened to you, and that the manner of doing it was attended with such circumstances of inhumanity, baseness and villany, as no instance can parallel. Mr. Crispe is brother-in-law to Mr. Coke, who on the 1st day of January last, under the colour of friendship and affection, invites Mr. Crispe and family to supper at Coke's house. Before this invitation he had agreed with Woodburne for hire, to lie in wait on purpose to effect the designed mischief. When Woodburne was lying in wait, Coke came several times to him to encourage him in his vile purpose. After supper, Mr. Coke, unmindful of all the obligations of brotherly love, of hospitality, and of the protection due to Mr. Crispe, by false and vile arts and persuasions entices him into the church-yard, the place designed and agreed upon for the execution of their wicked purposes. When he had got Mr. Crispe into this place, by sign he gave notice of it to Woodburne, who had followed at some distance; and then delivered him into the possession of Woodburne, and was present at the striking several blows with the hook. By the nature of the instrument every blow must maim and disfigure; and the blows being given by the order and direction of Mr. Coke by Woodburne, Mr. Crispe's nose was slit on purpose to maim and disfigure by one lying in wait: which are all the circumstances required by the act of parliament to make them Guilty of the felony with which they are charged. Which several facts we shall call our witnesses to make out, and doubt not but the jury will find them Guilty.

Serj. *Selby.* We desire, in the first place, Mr. Edward Crispe himself may be sworn, (Which was done accordingly.) Mr. Crispe, give an account to my lord and the jury of the whole matter.

Crispe. On New Year's-day last I was invited to sup at Mr. Coke's, and being there, he proposed to me to go to Mrs. Fanny Monke's.

L. C. J. (Sir Peter King.) Was this before or after supper?

Crispe. This was before supper: we supped about seven, and after supper about ten o'clock he called me out of his parlour, I followed him; we went into the church-yard: it was then very dark, the moon did not shine. He took three or four turns before the house where Mrs. Monke dwelt, then he stood still and made noise.

L. C. J. What kind of noise did he make?

Crispe. It was like a hallooing.

L. C. J. Were you under any fear or apprehension from that noise?

Crispe. Yes, my lord, I was afraid, and made up towards the wall; but in a quarter of a minute somebody came behind me, and knocked me down.

L. C. J. Did you know then who that man was?—*Crispe.* I did not.

L. C. J. Can you tell what was done to you afterwards?

Crispe. My lord, I cannot, for on that blow I lost my senses for some time.

L. C. J. How long was it before your senses returned?

Crispe. My lord, I cannot tell; but in some time I got up, and returned to Mr. Coke's.

Serj. *Selby.* In what condition did you find yourself?

Crispe. I was ready to die and faint, and I was found very much wounded.

Serj. *Branthw.* Did any surgeon come to you at Mr. Coke's?

Crispe. Yes, Sir, Mr. Sturgeon.

L. C. J. After the person came up who knocked you down, did you hear Mr. Coke say any thing?—*Crispe.* No, my lord.

L. C. J. Can you tell whether he staid any time, or what became of him?

Crispe. No, I cannot.

L. C. J. Was he there when the first blow was given.—*Crispe.* Yes, he was.

L. C. J. Will the prisoners ask Mr. Crispe any questions?

Coke. Mr. Crispe, was I present when you were knocked down?

Crispe. Yes, Sir.

Coke. Do you remember that you saw me?

Crispe. Yes.

Coke. How near was I to you?

Crispe. You were close by me when I was knocked down.

Serj. *Selby.* Call Mr. Brown and swear him. (Which was accordingly done.) I think you are a relation of Mr. Coke's.

Brown. Yes, Sir, I married his own sister, and he married Mr. Crispe's sister.

Serj. *Selby.* Were you at Mr. Coke's house last New-year's-day at night?

Brown. A day or two before last New-year's-day, I and my wife and daughter were invited to sup with him, and accordingly we went. I came about six o'clock, and found Mr. Coke and Mr. Crispe drinking a glass of wine in the parlour before supper.

Serj. *Selby.* Was there any other company with them?

Brown. No, the women were above stairs. I sat down with them, and we three staid in the parlour till supper-time. When supper was ready, we went up stairs. Then after supper, between eight and nine, we three came down into the parlour again. Some time after, Coke went out of the room, and then came back again and gave a call, or beckoned to Mr. Crispe, who followed him out of the room.

Serj. *Selby.* At what time of night was this?

Brown. After nine o'clock at night.

Serj. *Branthw.* How long was it before Mr. Coke returned?

Brown. He was gone about ten minutes and then returned.

Serj. *Branthw.* Was he in any disorder when he returned?

Brown. He seemed to be out of breath, as if he had been walking faster than ordinary.

Serj. *Branthw.* How far distant is the church-yard, where this gentlewoman dwelt, from Mr. Coke's house?

Brown. The church-yard is about twice the length of this shire-house from Mr. Coke's house.

Serj. *Branthw.* What did Coke do when he came in?

Brown. Immediately he drank a glass of wine to me, and after he had sat some time, he went out of the room. I heard a noise up stairs, and being told my daughter was ill, I went up, and in a little time came down again into the parlour, where I found Mr. Coke.

Serj. *Branthw.* Did you ask him what was become of Mr. Crispe?

Brown. I did then ask him what was become of Mr. Crispe, and he told me that he believed he was gone home in the dark. In about two or three minutes after, Mr. Crispe came in. He was very much wounded and bloody. I was so surprised that I could not take particular notice of him.

Mr. *Raby.* How long was it from Crispe's going out to his coming in again?

Brown. It was near half an hour.

L. C. J. So then Coke returned in about ten minutes, and Crispe in near half an hour.

Brown. Yes, my lord.

Serj. *Selby.* Did Mr. Coke see Mr. Crispe when he came back to his house?

Brown. Yes.

Serj. *Selby.* What did he say?

Brown. He seemed to be in a great consternation.

Mr. *Raby.* Do you know of any estate that would have come to Mr. Coke after Mr. Crispe's death?

Brown. I cannot positively say it of my own knowledge.

Mr. *Raby.* We will ask Mr. Crispe that question. Pray Mr. Crispe, would any estate have come by your death to Mr. Coke?

Crispe. In case I had died, 100*l.* per annum would have come to his wife, as one of my sisters.

L. C. J. Have you then no children, nor brothers?

Crispe. No, my lord; my next of kin are three sisters, one of which is Mr. Coke's wife, she would have been one of my heirs.

Serj. *Selby.* Call Mr. Sturgeon. (Who appeared and was sworn.) What do you know concerning this wounding of Mr. Crispe?

Sturg. I am a surgeon by profession; and the first day of January last at night, about eleven o'clock, I was sent for to Mr. Crispe at Mr. Coke's house: When I came, I found him very much wounded and cut, and in a very weak condition, and that he had lost a great deal of blood. I examined his wounds: One wound began at his right ear, divided the fleshy part of his cheek, and ended on his upper lip just under his right nostril; the flesh was all divided, and the jaw left naked. Another wound divided the right side of the nostril, and made an oblique cross over the wound, and ended near the right under-jaw.

Serj. *Selby.* Was his nose slit?

Sturg. Yes, Sir, the nose was cut from without into the nostril; the edge of the nose was not cut through, but there was a cut or slit in the nose that went through: I sewed it up: It was indeed but with one stitch: it is yet visible, and the nose was cut through.

Serj. *Selby.* Were there any other wounds?

Sturg. There was another deep wound under his chin, that reached from one jaw to the other. There was another wound, which began at his chin, crossed the left under-jaw, and tended towards his ear. There was also a small wound on his left cheek, another on his upper lip, and another on his left temple.

Serj. *Selby.* How many wounds had he in all?

Sturg. Seven.

Serj. *Selby.* Do you think there were seven distinct wounds, that had seven distinct blows?

Sturg. I take it, that every one of the seven wounds had a distinct blow.

Serj. *Selby.* With what instrument did you apprehend those blows were given?

Sturg. It was cut so clean that I thought it was done either by a knife or razor.

L. C. J. Let the jury see Mr. Crispe's wounds.

Then his face and wounds were shewn to the Jury for their observation.

Serj. *Branthw.* Swear Charles Willet. (Which was done accordingly). I think you are a constable in Bury St. Edmonds?

Willet. I am.

Serj. *Branthw.* Had you any occasion to speak to Woodburne concerning this matter; and what did he say?

Willet. I had a warrant from alderman Wright and Mr. Serjeant Reynolds to apprehend Coke upon Woodburne's examination.

Serj. *Branthw.* The question asked you is, what you know of Woodburne's confession, and what he said to you about this matter?

Willet. After Woodburne was committed, I was with him, and asked him, whether he was concerned in the wounding of Mr. Crispe? He told me, Yes, he was. I asked him how long Coke staid with him? He said that he had struck Crispe three or four blows before Coke left him.

Serj. *Branthw.* What else did you ask him, or did he say to you?

Willet. He told me, that he was walking up and down in the church-yard when Coke whistled to him, and that on that signal he went up and assaulted Mr. Crispe.

Serj. *Branthw.* Did he give you any account how long and where he waited before the fact was done?

Willet. He told me, that he was desired by Mr. Coke to be up and down in the church-yard about nine o'clock that night; and that

being a cold night Coke gave him a bottle of brandy, and told him he could not tell what time Crispe would come home, but desired him to be ready, and to stay, let it be never so long.

Serj. *Branthw.* Did he tell you with what instrument he did it?

Willet. He told me, he did it with an hook or bill, that was new ground for the purpose, and that it was in his house at the right hand of his door. I went according to his direction, and found it, and brought it to him; and he said, that was the hook—The hook I have brought with me, and this is the hook that I have now in my hand.

Mr. *Raby.* Call William Wetherel. (Who was sworn.) Give my lord and the jury an account what you know of this matter.

Wetherel. I am the gaoler; and the day after Mr. Coke was committed to me, about five minutes after one, he sent for me up into his chamber, where his wife was crying and in great disorder, as he seemed to be likewise. She was desiring her husband to discover. When he came to himself, he told me, that he and Woodburne had had a design to murder Mr. Crispe, and had attempted it several times; and desired me to go and secure Woodburne. I went to the alderman, and told him of it, and he gave me the like orders. Coming from the alderman I met Mr. Coke's man, who asked me, whether I had found him? On which I asked him, who, and what he meant, thinking him to be ignorant of his master's confession: but he told me, that his master had discovered it to him, and had sent him to take up Woodburne. Whilst we were talking, we saw Woodburne coming up, and we desired one John Carter, a smith, who was shoeing a horse, to assist us; which he did, and we secured Woodburne.

L. C. J. Did Mr. Coke confess any thing to you concerning this fact, and the manner of doing it?

Weth. Yes, my lord, he did. He told me several times, that he had a design to murder Crispe, and that he employed Woodburne, and delivered Crispe into his hands.

L. C. J. Did he tell you that?

Weth. He did tell me so: he told me also, that it was done with an hook; and that he bid Woodburne to cut his weasand or wind-pipe; and that if Woodburne had not been a cow-hearted dog, he would have so done, and secured Crispe from telling tales.

Mr. *Raby.* Did Coke tell you what means he used to do this to Mr. Crispe?

Weth. He said, that he called him out of his house, went into the church-yard with him, and there he delivered him into Woodburne's hands.

Mr. *Raby.* Did he say what signal was given?

Weth. Not that I remember; but he said, that Woodburne was placed there by his appointment.

Mr. *Raby.* For what design?

Weth. With an intent to murder him. When Woodburne struck him, Coke said, he went away immediately.

Mr. *Raby.* What have you heard Woodburne say concerning this fact?

Weth. I have heard Woodburne say, that he and Coke had lain in wait several times, and at several places, to murder Mr. Crispe.

Mr. *Raby.* Did Woodburne give you any account what he did at this time to Mr. Crispe?

Weth. Yes, he did; he said that he struck him a blow with his hook, and that not quite striking him down, he gave him a second blow, which did; and that Crispe, as he was falling, (who was never used to swear) cried out, God damn him; and that then it went to his very heart to think that he should kill a man with an oath in his mouth.

Mr. *Raby.* Did he say he gave him several blows?

Weth. He said he gave him several blows, and that he thought he was dead.

Mr. *Lee.* Call Robert Moon. (Who appeared, and was sworn.) What do you know of this matter?

Moon. When I heard what happened to Crispe, I said, I knew the person who did it, or the person who employed him to do it; and the reason was, because three years, or three years and a half ago, Mr. Coke sent for me, and said to me, at first I thought it to be in a jesting way, that he wished Mr. Crispe out of the world, he was a good-for-nothing fellow; his wife had a trick of playing away his estate, and he wished somebody would knock him on the head. Sir, said I to him, what advantage would that be to you? He shook his head, and said, a very good estate. Said I, I thought Crispe had but a small estate. Yes, said he, a very good one. Then I began to think there was something in it: after some little time, said he, I do not value ten or twenty guineas to knock him on the head. Then I began a little to reflect that he should have such an opinion of me, that I should be such a sort of a person.

Mr. *Lee.* What then did you say to him?

Moon. I told him, that I would not kill the greatest villain in the world for ten such towns as Bury.

Mr. *Lee.* What did he say afterwards?

Moon. I do not remember, I have forgot if there was any thing else.

Mr. *Lee.* How came you to remember this?

Moon. When I heard of this fact committed on Mr. Crispe, then it came fresh into my memory.

Serj. *Selby.* Call John Carter. (Who appeared and was sworn.) What trade are you of?

Carter. A blacksmith.

Serj. *Selby.* Did Coke at any time send Woodburne for you, and what past thereon?

Carter. On the Friday before New-year's-day last, which was on a Monday, Mr. Coke sent Woodburne to me who told me his master Coke wanted to speak with me.

Serj. *Selby.* Did you go?

Carter. Yes; I went to his house, and he ordered me to come up to him in his chamber.

When I came up, he told me that he wanted a good strong horse to carry his weight. I told him I did not know of any one then; but when I did, I would let him know. Upon that he said, By God, how do you go on, boy? I hear you have lost most of your business, you have got no iron nor coals, and you are afraid of a gaol; I have a thing now in agitation that will make a man of you as long as you live. I said I should be very glad of that. Said he, can you keep a secret? Yes, said I, as well as any one, to serve myself and my friend. Said he, can you keep one of the biggest secrets in the world? I told him, as well as any body. Said he, you are pretty much in debt, and if you will serve me in this, I can make a man of you as long as you live: do you think you could cut five or six men's heads off without scruple of conscience? I told him, No; it was too much for a man's conscience to bear. Said he, What, a scruple of conscience to do such a thing as that? there are those above who have done ten times worse. I suppose, Sir, said I, you mean the South-Sea gentlemen. Yes, said he, so I do; they have ruined families, and beggared gentlemen: to cut men's heads off is but a trifle to them. Said I, Mr. Coke, I believe you speak only in joke by way of merriment. Said he, What, do you think I sent for you by way of joke? I told him I could not do any such thing. Then, said he, do you think you can cut off one man's head without scruple of conscience? I told him, No. Then, said he, if you can't cut off a man's head, and lay it down upon the table before me, you are not for my turn: On that he fetched a bottle of brandy, and gave me a glass or two, and then said to me, Carter, I would have you go home, and consider of it for two or three days, and if you can cut off a man's head without scruple of conscience, you shall have plenty of gold and silver, and any thing else you ask. I told him, I needed no consideration, for I could not do it. Then, said he, send Woodburne to me. And as I went out, I saw Woodburne at the door, and sent him in to Mr. Coke.

Serj. *Selby*. Did he say any thing else to you, or any thing about Mr. Crispe?

Carter. I live in a house of Mr. Crispe's, and Mr. Coke had been formerly his steward, and Woodburne acted under him. And Mr. Coke said, that he heard my house was out of repair, that it would be his after Mr. Crispe, and whether I should not like it better for him to keep it in repair, as he had done before.

Serj. *Selby*. I think, my lord, we have done with our evidence, and have sufficiently proved Mr. Coke and Woodburne to be guilty not only within the intention, but the letter of the statute of the 22d of Car. 2, upon which they stand indicted. We have proved the malice premeditated and fore-thought, the intention to maim and disfigure, by slitting the nose (for men's intentions must be construed by their actions) and the maiming and disfiguring accordingly; and that Mr. Coke was privy to, and the aider and abettor of the offence: and therefore, gentlemen of the jury, we cannot doubt but that you will find them both guilty; and that your verdict and their conviction will be with the suffrage of all mankind.

Mr. *Raby*. My lord, having gone through our evidence, you will now permit me to make some few observations upon what has been offered, and from which we humbly apprehend it will most clearly appear, that we have fully proved and made out every thing necessary to maintain this indictment.

My lord, it must be agreed, that this is an offence created by a particular act of parliament, usually called sir John Coventry's act, made on the occasion of the like barbarous usage he met with, to punish that offence, and to prevent the like for the future: and I also agree, that the prisoners must appear to be guilty of those very facts, which by that act are made felony, or otherwise they cannot be punished by that law. But we humbly apprehend, that when that law, and the evidence which has been given against the prisoners are considered, they will appear to be guilty within the express words of that law; for which end I beg leave to mention that act, which is the 22 and 23 Car. 2, cap. 1, the words are these: "That if any person or persons, on purpose, and of malice fore-thought, and by lying in wait, shall unlawfully cut or disable the tongue, put out an eye, slit the nose, &c. with an intention in so doing to maim or disfigure, in any the manners before-mentioned, the person or persons so offending, their counsellors, aiders, and abettors (knowing of, and privy to the offence aforesaid) shall be felons, &c."

From this clause it appears the offence must be done;

1. Of malice fore-thought.
2. By lying in wait.
3. By slitting the nose, &c.
4. With an intention to maim or disfigure.

And we humbly submit it, that from the evidence which has been given against the prisoners, it most plainly appears, that the defendants are guilty of this offence in every circumstance described by this act of parliament.

1. For certainly there cannot be the least question, but that this was done of malice fore-thought, when it appears from the evidence to have been under consideration, and premeditated for three years and an half: and Mr. Coke had tried several persons, before he could find any so hardy as to execute his base purpose, or comply with so inhuman an attempt: and therefore we apprehend there cannot be any colour to say, this was not of malice fore-thought.

2. And that this offence was also done with lying in wait is as clear: for does it not fully appear upon the evidence of Mr. Crispe, that when he came out of Mr. Coke's house, Mr. Coke gave a whistle or signal? In vain had Mr. Coke given that signal, if no person had been in waiting to have heard it: to what end had that signal been given, if Mr. Coke had

not known there was some person to have heard it? It appears plainly Woodburne came upon the signal given; and what ensued you have heard, I need not repeat.

3. The third thing made material by this act, is, That the nose should be slit;* and that the nose was slit appears from the surgeon's evidence, who has given a very particular account of the seven wounds Mr. Crispe received in his face and head: and he says, the nose (the nostril) was cut through.

4. Whether the other circumstance, that this was done with an intent to maim and disfigure, does sufficiently appear, or not, is the only question that remains? And we submit it to your consideration, as that which is very clear from this evidence.

Men's acts are the best interpreters of their intents: if a man kills another without provocation, though no express malice or malicious intent appears, yet the very act of the party has always been taken to be a sufficient proof of his intent and malice fore-thought. The intent is latent in the mind, and can seldom be known otherwise than by the act which is done: and as there the malicious intent is collected from the act of the party, so here it is as reasonable to collect his intent to disfigure from the act which is done, the maiming and disfiguring Mr. Crispe; and the very manner of doing it speaks it.

Whoever looks upon this gentleman (Mr. Crispe) sees too plainly how much he is disfigured. And could a man cut another seven times on the head and face with this iron bill, with this weapon, without disfiguring him? Is it to be imagined? And when he has done the very act, when he has disfigured him, shall he say, he had no such intent? The act done, and the manner of doing it, speak it too plainly. It is confessed the intent was to murder; this is what both the prisoners admit to be the end designed; but did they not also intend the means? It would be in vain to intend the end, and reject the means to effect it: the means chosen to effect it have appeared to be to cut him to death, by striking him with a bill on the head and face: Is it possible to expect to cut him to death on the face with the weapon produced, and not to disfigure him? This is the act Woodburne has done, and Coke was present when Woodburne struck, even when he did this fact, and Coke was a counsellor, aider and abettor; he was present, and, in the words of the act of parliament, knowing of the offence. And therefore upon this evidence we submit it, whether we have not given satisfaction to the Court and Jury, that the prisoners are guilty.

This is not a prosecution of the party injured, arising from revenge or resentment, but is carried on by the public, by the crown, for the sake only of public justice, that by the punishment of this offence, the subjects may have that protection they ought to have by a due execution of the laws: and all we pray is, that the jury will give such a verdict as is agreeable to justice.

L. C. J. Woodburne, what have you to say for yourself?

Woodburne. May it please your honour, my lord, the first time that Coke began with me about this matter, was on a Wednesday in last barley-harvest. He sent for me to mend his copper, and after I had done it, he bid me go to the further end of the Mill-lane, and there he must speak with me, and which came first should stay for the other. I was there before him; when he came he was on horse-back, and his horse kicked about in a furious manner, that the people took notice of it. When they were gone, he told me, that he had a thing for me to do, but not to be done presently, and that if I did it I should want for nothing. I asked him what it was? He said about Mr. Crispe, to set him aside, that is, to kill him: But he said, it was not to be done presently: So he put his hand in his pocket and gave me eighteen pence. I told him, I never did such a thing in my life; I could not do it. Said he, it is not to be done presently, we have time to consider. A while after he sent for me again, and asked me, whether I had considered of it? I told him I could not do it. Said he, we must set Crispe aside; for Mrs. Crispe hath got a trick to play; she will make away what there is from me and my child. I said, I never did any such thing; I could not do it; and desired him to forbear. I went away and left him in his chamber. Within a while after he came to my house; said he, John, what is the reason you can't do this for me? Said I, I can't do it. Said he, what signifies it, I would do it for you. I said, I could not do it. Then he went away very uneasy, and in a week or fortnight sent for me again to his chamber, and there was at me again. I told him I could do no such work. Said he, why can't you do this work? I have been a good master to you, I made myself look little to bail you when you were in gaol. I turned about and cried. Said he, what makes you cry? Your crying signifies nothing; the money that I shall give you will do you and your family a kindness. Said I, I can do no such thing. Said he, it signifies no more the killing of him, than to kill a dog, for they do no good with what they have. Yes, said I, Mr. Crispe is a very good master; I worked for him, and his father before him: and so I went away. Afterwards my wife died three days before Gunpowder-Treason last: she was buried on that day, and being very poor, I sent my daughter to desire a little money of him to have the bell tolled for my wife; but he sent me none. My wife was buried on a Sunday, then on the Monday he sent his boy for me; I went down to him, and when I came, I fell a weeping for the loss of my wife, and having ten children. Said he, what makes you cry? You must pull up a good heart; though your

* See East's Pleas of the Crown, chap. 7, sect. 3.

wife be dead, you may have friends; here is that which which will do you a kindness hereafter. Said I, I am very sorry for the loss of my wife. Said he, what signifies that? She was carried well into the church, and is, no doubt, happy; she is gone before you; we must all go in our time: I was a friend to you in her illness, I sent her a good doctor at my own charge: this twenty pounds that I will give you will be a brave estate for you.

L. C. J. What were you to have this 20*l.* for?

Woodburne. It was to kill Mr. Crispe; he told me that I must set aside Mr. Crispe; he offered me 20*l.* to do it; but I then refused it. On Monday, New-year's-day, in the morning, Coke sent his boy for me to come to him; and between eight and nine in the morning I went to him. He was in his green-room. Now, said he, John, we shall have the fairest opportunity to kill Mr. Crispe. I told him, I was loth to do it; it was very cold, and I had an ague. Said he, I will give you that which shall warm you. He went to the closet, and gave me, out of the bottle that he used to carry in his pocket, half a pint of brandy, and told me, that happen how it will, I must not come near his house any more that day, lest afterwards there should be some suspicion; but, said he, whether ague or not, you must be at Mr. Morrice's porch, which is in the churchyard, about eight o'clock in the evening. I went there between eight and nine; about nine Coke came out, and gave me a whistle: on that I went up to him; he told me, Mr. Crispe was very jolly, and he believed it would be late before he came out. I told him, I did not care to stay. Said he, you must stay now; this is the time that will do it. I staid till ten o'clock; then he came to me again in Mr. Morrice's porch, and told me, that he believed Crispe would not go till eleven o'clock; but the later the better. Then he went from me again, and a little time after ten Coke and Crispe came out together, and on Coke's whistling I came up to them; Crispe was then before, and coming to get against the wall. I came up to Coke; he bid me have care not to hit him instead of Crispe, being very dark; so he took me by the sleeve to lead me up to Crispe; and said to Crispe, Brother, stand still; on that I hit him two strokes with my hook; though I never heard him swear before, yet he now swore, God damn him: on that Coke said, What! doth he swear? Secure him, down with him. He stood by him till I gave him several blows, and then he went away. Coke desired me to take away his watch; for, saith he, as to his money, he don't carry above half-a-crown or three shillings in his pocket; and when I go to London, I will sell the watch for you.

L. C. J. What Woodburne saith against Coke, is no evidence against Coke, and should not have been mentioned by him; but what he saith relating to himself before the fact, is so twisted with Coke, that without the whole it is not so intelligible as to himself.* However, the jury are to take notice, that what Woodburne saith, is only evidence against himself, and not against Mr. Coke.

* In the Case of Campion and others, vol. 1, p. 1049, one of the prisoners expressed his wish that they had been tried severally, alleging that "albeit the jurors be wise men and much experienced, yet all the evidence being given, or rather handled at once, must needs breed a confusion in the jury, and perhaps such a misprision of matters, as they may take the evidence against one to be against all, and consequently the crime of the one for the crime of the other, and finally the guilty to be saved, and the guiltless to be condemned."

It is sufficiently obvious, that what he alleged is not altogether groundless, and that where the legal evidence against one of the prisoners is sufficiently strong to establish a very high probability without yet superinducing that moral certainty which jurymen ordinarily require in order to the conviction of a prisoner, the suffering a jury to hear evidence which is not legally admissible against him, though it is legally admissible against a co-prisoner, may be highly prejudicial to the former.

Mr. Burnett (Treatise on the Criminal Law of Scotland, chap. 25), in laying down general rules of evidence, sets forth as the eighth:

"When several persons are prosecuted for the same offence (super eodem medio) every objection to a witness, which renders him inadmissible as to one of the *correi*, ought to render him inadmissible as to all," (quoting for it Kilkerran *voce* Witness, N° 17); and observes, that "this rule is obviously founded on this, that, in a joint delinquency, it is difficult to separate the case of each prisoner, and though a witness may confine his evidence to acts done by one, still it may go to the *corpus delicti*, which applies to all of them."

However, another learned writer on the Criminal Law of Scotland, Mr. Hume (Commentaries respecting Trial for Crimes, chap. 9, vol. 1, p. 286), expresses an opinion, that the trial of different persons together is liable to no objection, unless where some of them are thereby deprived of testimony in their favour, which would be given by others.

With respect to the joint or several indictment, and trial of different persons, serjeant Hawkins says:

"It seems certain at this day, that notwithstanding the offence of several persons cannot but in all cases be several, because the offence of one man cannot be the offence of another; but every one must answer severally for his own crime, yet if it wholly arise from any such joint act which in itself is criminal, without any regard to any particular personal default of the defendant, as the joint keeping of a gaming-house, or the unlawful hunting and

L. C. J. After you had given him those several blows with your hook, what did you next?

Woodburne. I began immediately to reflect on what I had done, and went away forthwith to my own house, where I was about to take a line to hang myself.

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carrying away of a deer, or maintenance, or extortion, &c. the indictment or information may either charge the defendants jointly and severally; as thus, "quod custodiverunt, et uterque eorum custodivit;" or "quod asportaverunt, et eorum uterque asportavit;" or may charge them jointly only, without charging them severally, because it sufficiently appears, from the construction of law, that if they joined in such act, they could but be each of them guilty; and from hence it follows, that on such indictment or information some of the defendants may be acquitted, and others convicted; for the law looks on the charge as several against each, though the words of it purport only a joint charge against all.

"But where the offence indicted doth not wholly arise from the joint act of all the defendants, but from such act joined with some personal and particular defect or omission of each defendant, without which it would be no offence, as the following a joint trade without having served a seven years apprenticeship required by the statute, in which case it must be the particular defect of each trader which must make him guilty, and one of them may offend against the statute, and the others not, the indictment or information must charge them severally and not jointly; for it is absurd to charge them jointly, because the offence of each defendant arises from a defect peculiar to himself. And for the like reason a joint indictment against several, for not repairing the street before their houses, hath been quashed." Pleas of the Crown, book 2, ch. 25, § 89.

In a Case in Strange (p. 921), one reason assigned why several defendants cannot be joined in one indictment for perjury is, that the jury might on the trial apply to all evidence which is but evidence against one. I recollect that in a case of two persons tried together at the Old Bailey, the learned and experienced magistrate who presided clearly stated in his charge to the jury, that part only of the evidence given was applicable to both the prisoners: notwithstanding which, when the jurors, who had brought in a verdict of guilty against both, were questioned as to the ground on which they proceeded, it appeared that they had applied against both prisoners the whole evidence given; so, after farther instruction, they amended their verdict, and convicted one and acquitted the other prisoner. At the end of the Case of Noble, Salisbury, and Sayer, vol. 15, page 731, is an argument, (qu. composed by Emlyn), to prove that any man, though jointly indicted with others in the same indictment, may of right insist to be tried singly.

L. C. J. Have you any witnesses, or any body to speak for you?

Woodburne. My lord, here are my two daughters in the Court; I desire your lordship would be pleased to hear them, Ann Woodburne and Sarah Woodburne. (Who being called, appeared, and were sworn.)

L. C. J. What say you, Ann Woodburne?

Ann Woodburne. On the Wednesday before New-year's-day Coke sent for my father by his boy; I told the boy my father was in bed, and sick of an ague, and could not come. The boy came again, and said, my father must by all means come; but he would not then go; but he went to him on New-year's-day in the morning, and came home again. About five or six o'clock in the evening, my father went out with a hook in his hand; and he said, he should not be at home till eleven or twelve at night; and if any body came for him, he bid us not take any notice but that he was at home. We thought he took the hook to cut some wood with.

L. C. J. Have you any thing more to say?

Ann Woodburne. When my mother died, I went to Mr. Coke's to borrow 5*s.* of him, to have the great bell toll for my mother, and told him, that my father would pay him again. He said, what signified the ringing of the great bell? Her soul would be never the better for it; but if he will satisfy me in my request, he shall have five times five shillings.

L. C. J. What say you, Sarah Woodburne?

Sarah Woodburne. Coke did frequently send for my father at all times, both of day and night; and he would often come to my father, and when he came, they would go out, and walk down the back-side, and talk together. After this fact was done, Coke sent his boy for my father, and the boy said, they must not go together; for if they did, people would take notice of them.

L. C. J. Woodburne, have you any thing more to say?

Woodburne. This day nine weeks, which was a week after the fact committed, Coke sent for me, and said, John, I wish you would have done the thing I ordered you; but you have been before alderman Wright and the recorder, and have told your story well; but hold you fast, they will examine you again; I shall—

L. C. J. This is subsequent to the fact, and is not evidence against Coke. If you, Woodburne, have done, then Mr. Coke, what have you to say for yourself?

Coke. May it please your lordship, I am much ashamed, and very unable to defend myself; I am ashamed to think I should be concerned in so heinous a crime against Mr. Crispe's life; I am even confounded at it; it is indeed a very great crime, and I know not what to say for myself. As for Woodburne, he hath asserted against me several things that are false.

L. C. J. I have told the jury, that what he hath said is no evidence against you.

Coke. When I first spoke of this matter to Woodburne, he said, he should value it no more than the cutting off the head of a dog. I did, indeed, go out with Mr. Crispe that night, but I was not near him when Woodburne struck him, but retreated to my own house in a moment. My lord, I am very sensible that a point of law may arise on the statute whereon I am indicted.

L. C. J. Whereon?

Coke. With respect to my intention.

L. C. J. Your intention is matter of fact, and must be tried by the jury; whether your intent was to maim and disfigure, this doth not seem to me to be a point of law; if there be any point of law that shall arise, you shall have counsel to speak to it; but whether you slit Mr. Crispe's nose with an intention to disfigure him, is a matter of fact.

Coke. My intent was to kill Mr. Crispe, and not to maim or disfigure him.*

L. C. J. But that is the question the jury are to try, whether you did not of malice slit his nose, with an intent to disfigure him? If the jury do not find that you so did, you must be acquitted on this indictment. Supposing your design was to kill, yet your design might be likewise to maim; and this the jury must try; this is matter of fact for their consideration.

Coke. This is a very penal statute, and I am unable to plead my own cause; I beg your lordship to assign me counsel.

L. C. J. If any point of law doth arise upon the statute, you shall have counsel; but as yet there is nothing but matter of fact; whether the fact proved doth support the charge in the indictment; or, in other words, whether the evidence be sufficient to make good the charge; this must be left to the jury; I will state the fact to them, and they are on their oaths to give in their verdict.

Coke. This is a very penal statute, and I cannot argue it for myself; I hope your lordship will assign me counsel; this is the first indictment that ever was upon this statute.

L. C. J. What do the king's counsel say to it?

Serj. *Selby.* After so full an answer as your lordship has given, I think it but vain to say any thing; I always thought that no matter of law could arise upon this fact and indictment, for Woodburne did the fact of malice fore-thought, by lying in wait, and with an intention to maim; Mr. Coke was aiding, abetting, and privy to the fact: therefore, though it was an intent to kill, it must be to maim also; he could not intend to kill him with such an instrument, without intending to maim him first; and therefore, if there were two intentions, and but one executed, there is no pretence to say, that what was executed was not intended. Mr. Coke says, that never was any indictment before upon this statute; if not, it must be because no man before ever thought of being guilty of so horrid an action.

L. C. J. If any point in law doth arise you shall have counsel: but the fact must be agreed and stated, before the law can come in debate. You say, your intent was only to murder; but that is not yet agreed or found to be the fact: it is the point now in trial, whether you did it not with an intention to maim or disfigure; and according as that intention shall appear to the jury, so will they either acquit or convict you; therefore, if you have any thing more to say, I desire you to go on.

Coke. I submit to your lordship's judgment.

L. C. J. Gentlemen of the jury, this is an indictment of the prisoners at the bar, John Woodburne and Arundel Coke, for felony, by lying in wait, and purposely and maliciously slitting the nose of Edward Crispe, with intention, in so doing, to maim or disfigure the said Edward Crispe. John Woodburne is indicted for the principal actor, or the person who did the fact; and Arundel Coke is indicted for being present, aiding and abetting. This indictment is founded on a statute made in the 22nd year of king Charles the second, entitled, "An Act to prevent malicious maiming and wounding;" whereby it is enacted, that if any person or persons, from and after the 24th day of June, in the year of our Lord 1671, on purpose, and of malice fore-thought, and by lying in wait, should unlawfully cut out, or disable the tongue, put out an eye, slit the nose, cut off a nose or lip, or disable any limb or member of any subject of his majesty, with intention in so doing to maim or disfigure, in any the manners before-mentioned, such his majesty's subject, that then, and in every such case, the person or persons so offending, their counsellors, aiders and abettors (knowing of, and privy to the offence, as aforesaid) shall be, and are thereby declared to be felons, and shall suffer as in cases of felony, without benefit of the clergy. Now the question on this indictment, is, whether John Woodburne did on purpose, and of malice

* As to the law upon this subject, see Hawkins's Pleas of the Crown, book 1, ch. 55, sect. 8. "Upon this Case," says Mr. East (Crown Law, chap. 7, sect. 6.) "Mr. Justice Yates has observed, that it seemed to him that the whole aim of this defence, allowing the intention to be what the prisoners contended, was insufficient; and that an intention of violence more criminal and malignant could not excuse them from one that was less so. Yet on the conference of the judges on Carrol's Case, Willes J. and Eyre B. expressed some dissatisfaction with this case, and thought at least that the construction ought not to be carried further." Lord Bacon's is a good rule, that criminal statutes should not be extended by equity. It is observable that neither in this part of the trial nor in directing the jury did L. C. J. King adopt as applicable to this case, the reasoning which is set forth in the conclusion of the sixth section of Mr. East's seventh chapter above referred to.

fore-thought, and by lying in wait, unlawfully slit the nose of Edward Crispe, with an intention to maim or disfigure him therein? And, whether Arundel Coke was feloniously present at the fact, aiding and abetting Woodburne in the commission and perpetration of it? To make out this matter, several witnesses have been called; the first witness was Edward Crispe himself, who informs you, that Arundel Coke married his sister, and Mr. Brown, Coke's sister; and that last New-year's-day they were invited to sup at Mr. Coke's; and that before supper Mr. Coke proposed to go to Mrs. Monke's; and that after supper, about ten o'clock at night, Mr. Coke called Mr. Crispe out of the parlour to go to this Mrs. Monke's; and that when they had walked three or four turns before the house where Mrs. Monke dwelt, Coke stood still, and made a noise like a hallooing, which made Mr. Crispe afraid, being dark, so he made toward the wall; but in a quarter of a minute's time, a man came and knocked him down: who that man was, nor what was then further done to him, he could not then tell, because by the blow he lost his senses for some time; but afterwards he got up again, and returned to Mr. Coke's house, from whence he came, but in a sad condition, much wounded and bloody, where Mr. Sturgeon the surgeon came to him, from whom you have the particulars of his case. He says, that Coke was close by him when he was knocked down; but did not hear Coke say any thing. He also says, that upon his death 100*l.* per annum would have gone to Coke's wife, as one of his sisters and co-heir.

The next witness is Mr. Brown, who married Coke's sister; and he says, that he, his wife and daughter were invited to sup at Mr. Coke's the evening of New-year's-day; that he came about six o'clock, and found Mr. Coke and Mr. Crispe drinking a glass of wine in the parlour before supper; that he sat down and drank with them till supper, that after supper they three came into the parlour again, and some time after Coke went out of the room, and then came back again, and called Mr. Crispe out of the room, who followed him; that Coke returned again in about ten minutes, and seemed to be out of breath, as if he had been walking faster than ordinary; that Coke's house is distant from the church-yard about twice the length of the shire-house; that Coke, after he came in, drank a glass of wine; and that Brown asked Coke what was become of Mr. Crispe; and that Coke said, he believed he was gone home in the dark; and that in about two or three minutes after Mr. Crispe came in much wounded and bloody; and that it was about half an hour between the time of Mr. Crispe's going out and returning again.

Mr. Sturgeon the surgeon swears, that being sent for, he came to Mr. Crispe about eleven o'clock that night; that he had lost a great deal of blood, and was very much wounded; and that in the whole he had received seven distinct wounds, which he apprehends were by so many several blows. He hath given you a particular description of the several wounds; the second wound is that which is alleged to be within this statute. He tells you, that this wound divided the right side of the nostril; and that though the edge of the nose was not cut through, yet it was cut through in another place; the nose was slit; there was a cut from without into the nostril: indeed the slit was not very great, for he sewed it up with one stitch; but he is sure that a slit there was, and you have seen Mr. Crispe's nose. Now the slitting of the nose is one of the particular facts mentioned in the statute.

Mr. Willet the constable swears, that he was with Woodburne after his commitment, and that he told him, he was concerned in the wounding Mr. Crispe; that he had been there waiting for that purpose; and that when Coke whistled to him, he went up and made the assault upon Mr. Crispe with an hook or bill, that was new-ground for that purpose, and directed him where to find it at his house, which he accordingly did, and brought it to Woodburne, who said that was the hook; and the hook hath been now produced before you, and you have seen it.

The next witness is Mr. Wetherell the gaoler, who swears, that the day after Coke was committed to his custody, Coke sent for him up into his chamber, and told him, that he and Woodburne had had a design to murder Mr. Crispe, and had attempted it several times, and desired him to go and secure Woodburne; which he accordingly did. He hath given you an account how and in what manner he secured him; and he swears moreover, that Coke told him several times, that he had a design to murder Crispe, and that he employed Woodburne, and delivered Crispe into his hands; that Woodburne did it with an hook, and that he bade Woodburne to cut his wind-pipe; and that if Woodburne had not been a cow-hearted dog, he would have so done, and secured Crispe from telling tales. Wetherell likewise swears, that Coke told him, that he called Crispe out of his house, went into the church-yard with him, and there delivered him into Woodburne's hands; and he farther swears, as to Woodburne, that Woodburne owned that he and Coke had lain in wait several times, and at several places, to murder Mr. Crispe; and as to this particular fact, he gave him this account, that he struck him a blow with a book, and that not quite striking him down, he gave him a second blow; and that as Crispe was falling, he cried out, God damn him; and that then it grieved him to kill a man with an oath in his mouth.

Robert Moon swears, that when he heard what was befallen Mr. Crispe, he said, that he knew the person that did the fact, or him who employed the person; and the reason was, because about three years and a half before Mr. Coke sent for him, and told him, that he wished Mr. Crispe out of the world, and that some-

body would knock him on the head; and that when he asked him what advantage that would be to him? He replied, a very good estate; and afterwards told him, he did not value ten or twenty guineas to knock him in the head: This made Moon reflect upon himself, and was concerned that he should have such an opinion of him; and thereon told him, that he would not kill the greatest villain in the world for ten such towns as Bury.

John Carter swears, that on Friday before New-year's-day last, Coke sent Woodburne to him, to tell him that his master Coke wanted to speak with him; that thereon he went to his house, and was ordered to come up to him in his chamber, which he did; and there Coke first enquired, whether he could help him to a good strong horse? And then told him, that he heard he had lost much of his business; he had no iron, nor coal; and that he had a thing in agitation that would make a man of him as long as he lived; and thereon asked him, whether he could keep a secret, and one of the biggest secrets in the world? And upon his telling him that he could, he asked him whether he could cut five or six men's heads off without scruple of conscience? And when he told him that that was too much for a man's conscience to bear, he told him, there were those above, meaning the South-sea gentlemen, who had done ten times worse, ruined families, and beggared gentlemen; and that to cut men's heads off was but a trifle to them. That hereon Carter told him, he believed he spoke only in joke, and by way of merriment; but Coke asked him, whether he thought he sent for him only by way of joke? And then asked him, whether he could cut off one man's head without scruple of conscience? And when Carter told him, No: Then Coke told him, if he could not cut off a man's head, and lay it down on a table before him, he was not for his turn; and then gave him a glass of brandy, and bid him consider of it for a day or two, and if he could cut off a man's head without scruple of conscience, he should have plenty of gold and silver, and any thing else he should ask: Whereto Carter replying, that he needed no consideration, he could not do it; then he bid him send Woodburne to him; which he did.

In all this discourse between Carter and Coke I do not find that Crispe was the person named on whom this outrage should be committed; but Carter, who is a tenant of a house of Mr. Crispe's, says, that Coke told him he heard the house was out of repair; that it would be his after Mr. Crispe; and asked him, whether he would not like it better for Coke to keep it in repair, as he had done before, whilst he was Crispe's steward?

This is the substance of the evidence given against the prisoners at the bar, to prove that they maliciously, and by lying in wait, have slit Mr. Crispe's nose with an intent to disfigure him therein.

Woodburne doth not deny the general fact, that is, the designed lying in wait to assault Mr. Crispe, nor the cutting or knocking him down with his book; his confession is not evidence against Coke, but it is against himself; and you hear what he hath owned; that last barley-harvest Coke sent for him to mend his copper, and then ordered him to meet him at another place; which was accordingly done; where Coke told him, that he had a thing for him to do, but it was not to be done presently; and if he would do it, he should want for nothing. And when he asked him what it was? He said, to set Crispe aside, that is, to kill him; and Coke gave him eighteen pence. That then he told him, he could not do it; that Coke solicited him several times afterwards to murder Crispe; the particulars whereof I do not enumerate, because they principally relate to Coke, against whom it is not evidence; but yet they so far relate to Woodburne, as to shew his knowledge and deliberation in this matter; therefore to come to the day whereon this fact was done, Woodburne saith, that about eight or nine in the morning Coke sent for him, and told him, that that day they should have the fairest opportunity to kill Mr. Crispe; and it was agreed between them, that Woodburne should be in the church-yard, at Mr. Morrice's porch, about eight o'clock in the evening. He accordingly went with his hedge-hook or bill, which hath been here produced. Coke came out to him twice by himself, and the third time a little after ten o'clock Coke and Crispe came out together; and then Coke whistled, which was the signal between them; and thereon Woodburne came up, and owns, that with his hook he cut and knocked down Crispe, and that though he never heard Crispe swear before, yet that now, as Crispe was falling he swore God damn him; whereon he gave him those several other wounds and blows that Crispe received; and then reflecting on what he had done, immediately went to his own house, where he was about to take a rope to hang himself.

By this defence of Woodburne, you see that he doth not deny the assaulting and wounding of Mr. Crispe; but that that he chiefly insists on is, that what he did was by the solicitation and procurement of Mr. Coke; which is no justification or excuse. However, he hath called two witnesses, Ann and Sarah Woodburne, his two daughters, to prove that Coke did frequently send for their father, and often came to him at his own house, and would be in private conference together, which probably was about this matter; but if it were, this only confirms what Woodburne insists on, that he was solicited and hired by Coke to do this fact; which, as I said, will neither justify nor excuse him; for no man is to obey the unlawful commands, or hearken to the illegal advices of any other person whatsoever.

As for Mr. Coke, that which he principally puts his defence upon is, that his intent was to kill and murder Mr. Crispe, but not to maim him, or to slit his nose, or to disfigure him in so doing; and therefore, though in pursuance and execution of the attempt to murder Mr. Crispe,

they slit his nose, or might thereby disfigure him, yet that not being their intention and design, he is to be acquitted on this indictment, wherein the intent of the party is one of the principal ingredients to make him guilty. This same defence will serve also for Woodburne, that they intended to murder, but not to maim; and if they did maim, it was with an intention to kill and not to disfigure. Now this indictment is, as I told you, founded on the 22nd and 23rd Car. 2, c. 1, for that on purpose, of malice fore-thought, and by lying in wait the prisoners did unlawfully and feloniously slit the nose of Edward Crispe, with intention in so doing to maim or disfigure him. Woodburne is charged as the actor or principal agent, Coke as being present, aiding, and abetting; which in point of law, is the same, as to the guilt and conscience, both being in law principals.

That this attempt on Mr. Crispe was designed, malicious, and by lying in wait, the evidence is very strong; there has been also very strong evidence given, that the nose of Mr. Crispe was slit by Woodburne, and that Coke was present on the same design with Woodburne.

But the thing chiefly insisted on is, that the slitting of Mr. Crispe's nose was not with an intention in so doing to maim or disfigure him; and if it were not with that intent, then the prisoners will not be guilty upon this indictment.

Now, gentlemen, what the intent of these persons was in slitting Mr. Crispe's nose, you are to try; this is a matter of fact for your consideration and determination: it is the same in other felonies, where the intent of the party makes the crime. Burglary is breaking open an house in the night time, with an intent to commit a felony; though no felony be committed, yet if there was an intent to do it, it is burglary; which intent is to be tried by the jury. Larceny or theft, is taking away another man's goods, with an intent to steal; if it were without such an intent, it would only be a trespass and no larceny; but whether it were or were not with such an intent, is a matter of fact to be enquired into and determined by the jury. Nay, the intent is so necessary in all felonies, that a person who hath no intent or design, as a madman, lunatic, infant, &c. cannot commit felony for that very reason; because he cannot have any intent or design in his actions. So that in this case you are to try no other matter than what is tried in other felonies, viz. the intent of the party.

Now, how is the intent of the party discovered in other cases? by the facts themselves, by the precedent, concomitant and subsequent circumstances of the facts, by the manner of doing, and the like.

There are some cases where an unlawful or felonious intent to do one act, may be carried over to another act, done in prosecution thereof; and such other act will be felony,* because done in prosecution of an unlawful or felonious intent. As, if a man shoots at a wild fowl, wherein no man hath any property, and by such shooting happens unawares to kill a man; this homicide is not felony, but only a misadventure or chance-medley, because it was an accident that happened in the doing of a lawful act: but if this man had shot at a tame fowl, wherein another had property, but not with intention to steal it, and by such shooting had accidentally killed a man, he would then have been guilty of manslaughter, because done in prosecution of an unlawful action, viz. committing a trespass on another's property: but if he had had an intention of stealing this tame fowl, then such accidental killing of a man would have been murder, because done in prosecution of a felonious intent, viz. an intent to steal. So a man of malice intends to burn one house, in execution thereof he happens to burn another house; this is a malicious and felonious burning of this other house, because sprung out of a malicious and felonious intent. The like may be instanced where poison is intended to be given to one person, and another takes and eats it, and thereby dies. And other cases there are of the like nature, where acts done in prosecution of felonious intents, participate of the nature of their original from whence they spring.

But now the indictment on this statute is for a certain particular intent; for purposely, maliciously, and by lying in wait, slitting Mr. Crispe's nose, with an intention in so doing to maim or disfigure: and you are to consider, whether the ingredients necessary to make this a felony within the statute, have been proved to your satisfaction. The facts necessary to be proved on this indictment are, that on purpose, and of malice fore-thought, and by lying in wait, they unlawfully slit the nose of Mr. Crispe, with intention in so doing to maim or disfigure. As to the fact of slitting the nose, that is directly and positively sworn: there can be no doubt but that it was an unlawful slitting. Then the next thing for your consideration will be, whether this unlawful slitting was on purpose, of malice fore-thought, and by lying in wait? As to this, a great deal of evidence hath been given; and what passed before, and at the time of the fact, will guide you herein. And if on a review of the evidence, you shall be of opinion, that this unlawful slitting of the nose was on purpose, of malice fore-thought, and by lying in wait*; then the next question will be, whether this was an intention to disfigure? Facts do in some measure explain themselves; and the circumstances preceding and accompanying those facts, and the manner of doing them, do many times more

* See Leach's Hawkins's Pleas of the Crown, book 1, c. 29, § 11.

* As to what is or not a lying in wait within this statute, see in Leach, the Cases of William Lee, O. B. July, 1763, of Thomas Tickner, Feb. 1778, and of John Mills, April, 1783, cit. in a note to Tickner's Case; and East's Pl. Cr. ch. 7, ss. 5, 6.

fully explain and declare the intent of the party. The prisoner, Mr. Coke, (which defence goes both to him and Woodburne) insists, that their intention was to murder, and not to maim; and that if they did maim or slit the nose, it was with an intention to kill, and not with an intention to maim or disfigure. On the other side, it is insisted on by the king's counsel, that though the ultimate intention might be to murder, yet there might be also an intention to maim and disfigure; and though the one did not take effect, yet the other might: an intention to kill doth not exclude an intention to maim and disfigure. The instrument made use of in this attempt was a bill or hedging-hook, which in its own nature is proper for cutting and maiming; and where it doth cut or maim, doth necessarily, and by consequence disfigure. The attempt intended on Mr. Crispe was immediately to his person, to do him a personal injury. Besides, the manner of doing and perpetrating this fact is proper to be considered; that it was done by violence, and in the dark, where the assailant could not well make any distinction of blows; but knocked and cut on any part of Mr. Crispe's body, where he could, till he had sunk him down, and done to him whatever else he pleased. And if the intention was to murder, you are to consider, whether the means made use of in order to effect and accomplish that murder, and the consequences of those means were not in the intention and design of the party; and whether every blow and cut, and the consequences thereof, were not intended, as well as the end for which it is alleged those blows and cuts were given?

All these several things, which I have mentioned, are proper for your consideration: you will add them to your own observations; and if, upon the whole, you are satisfied from the evidence, that Woodburne did on purpose, and of malice fore-thought, and by lying in wait, unlawfully slit the nose of Edward Crispe, with intention, in so doing, to maim or disfigure; and that Arundel Coke was feloniously present at the commission of this fact, and aiding and abetting therein; then you will find them Guilty: but if this hath not been proved to your satisfaction, then you are to acquit them, and find them Not Guilty.

[Then the Jury withdrew to consider of their verdict, and in about half an hour returned again.]

Cl. of Arr. Gentlemen, answer to your names.—Here, (and so the rest.)

Cl. of Arr. Gentlemen, are you all agreed on your verdict?—*Jury.* Yes.

Cl. of Arr. Who shall say for you?

Jury. Our foreman.

Cl. of Arr. John Woodburne, hold up thy hand. (Which he did.) Look upon the prisoner, how say you? Is John Woodburne Guilty of the felony whereof he stands indicted, or Not Guilty?—*Foreman.* Guilty.

Cl. of Arr. What goods or chattels, lands or tenements?

Foreman. None to our knowledge.

Cl. of Arr. Arundel Coke alias Cooke, hold up thy hand. (Which he did.) How say you? Is Arundel Coke alias Cooke Guilty of the felony whereof he stands indicted, or Not Guilty?

Foreman. Guilty.

Cl. of Arr. What goods or chattels, lands or tenements?

Foreman. None to our knowledge.

Cl. of Arr. Then hearken to your verdict, as the Court hath recorded it. You say, that John Woodburne is Guilty of the felony whereof he stands indicted: you say, that Arundel Coke alias Cooke is Guilty of the felony whereof he stands indicted; and that neither they, nor either of them, had any goods or chattels, lands or tenements at the time of the felony committed, or at any time since, to your knowledge. And so you say all.

Jury. Yes.

Coke. I desire to know of your lordship, whether the nose can be said to be slit within the meaning of this statute, when the edge of it was not cut through?

L. C. J. It is true, the edge of the nose was not slit, but the cut was athwart the nose; which cut separated the flesh of the nose, and cut it quite through into the nostril: this I take to be a slitting of the nose *; and the surgeon swore the nose was slit.

On Wednesday, the 14th of March, John Woodburne, Arundel Coke alias Cooke, and one Edward Shorter, who was convicted of burglary, were brought to the bar, in order to receive their Sentence; and the Court proceeded thus:

Cl. of Arr. John Woodburne, hold up thy hand. (Which he did.) Thou hast been indicted of felony, on the statute, for purposely, maliciously, and by lying in wait, slitting the nose of Edward Crispe, gent. with intention in so doing to maim or disfigure him. Thou hast been thereupon arraigned, thou hast pleaded thereunto Not Guilty, and for thy trial thou hast put thyself upon God and thy country; which country hath found thee Guilty; what hast thou to say for thyself, why the Court should not proceed to give judgment of death upon thee, and award execution according to the law?

To which Woodburne said nothing.

Cl. of Arr. Arundel Coke alias Cooke, hold up thy hand. (Which he did.) Thou hast been indicted of felony, on the statute; for being feloniously present, aiding and abetting John Woodburne, in purposely, maliciously, and by lying in wait, slitting the nose of Edward Crispe, gent. with intention in so doing,

* Whether a transverse cut is a slit, was much debated in Carrol's Case, July Sessions at O. B. 1765. See East's Pleas of the Crown, chap. 7, s. 3. There is an account of this Case and of the prisoners in the Annual Register for 1765, p. 214. See, too, in Leach, Tickner's Case, O. B. February, 1778.

to maim or disfigure him. Thou hast been thereupon arraigned, thou hast pleaded thereunto Not Guilty, and for thy trial thou hast put thyself upon God and thy country, which country hath found thee Guilty; what hast thou to say for thyself, why the Court should not proceed to give judgment of death upon thee, and award execution according to the law?

Coke. Though your lordship did not think it proper yesterday to assign me counsel, yet I hope your lordship will now give me leave to speak for myself; especially, since I am the first unhappy instance of an indictment on this statute; no indictment, as far as it appears by the law-books, was ever yet founded on this statute, and therefore ought to be very well weighed.

L. C. J. Call the king's counsel, that they may hear what is said.

[Then the king's counsel were sent for, and being come:]

L. C. J. Mr. Coke, you may now go on with what you have to offer.

Coke. My lord, I was saying, that I am the first unhappy instance of an indictment on this statute; no indictment, as far as appears by the law-books, was ever yet founded on this statute; and therefore it ought to be very well weighed, especially in the first instance to which it appears to have been ever applied. It is a very penal statute, and consequently, by the known rule of law, not to be carried beyond the express letter of it; consequently no crime, of what nature or magnitude soever, can fall within the purview of it, but such as is identically the same in every circumstance with that described by the words of the statute itself.

The crime described by the statute is the unlawful cutting out, or disabling the tongue, putting out an eye, slitting the nose, cutting off a nose or lip, or disabling any limb or member, attended with these particular circumstances:

First, On purpose and of malice forethought.

Secondly, By lying in wait.

Thirdly, With intention in so doing to maim or disfigure, in any of the manners beforementioned in the statute.

These circumstances must all concur to constitute that particular crime described by the statute; and where any of them are wanting, of what magnitude soever the offence may be, it is not the offence which the statute has specified.

If the first circumstance be wanting, no man can say that any offence, though attended with the two other, can fall within the statute; this is sufficiently plain of itself.

As to the second; A and B, of malice forethought, appoint and meet to fight a duel; A in the rencounter runs B into the eye, and puts it out; no body has ever imagined this to be within the statute, because the circumstance of lying in wait is here wanting.

As to the third; suppose A lies in wait to rob B, B resists, and in the scuffle is wounded, as the statute describes, but gets off. This is a case which very frequently happens, yet no one ever thought it to be within the statute, nor was any one ever indicted for this upon it: The only reason of which must be, because the intention was to rob, and not to maim and disfigure the person.

In my case, if it be taken upon the evidence of Mr. Crispe, nothing more appears than the assault itself: If my confession be read, the lying in wait, and the malice forethought will be proved; but then it will be likewise proved, that I had no other intention but to kill, and had no other part, but by giving orders to Woodburne for that purpose; and my confession must be taken together.

Nor is it an objection to say, that the crime which is proved by the evidence is much worse than that which is described by the statute; for if it is worse, then it cannot be the same. Even in cases of crimes by the common law, if upon an indictment for a crime of inferior nature, the evidence proves the fact attended with circumstances which brings it within the description of a crime of a superior nature, the person indicted must be acquitted. At summer assizes at Dorchester, anno 1712, a woman was indicted before Mr. Justice Eyre, for the murder of another woman; upon this evidence, it appeared, that the person murdered was her mistress, which made the crime petty-treason. The judge directed this matter to be specially found, and upon conference with all the judges it was held, she ought to be acquitted upon this indictment, as she accordingly was; and was afterwards indicted for petty-treason, and convicted and executed thereupon.

Where a new offence has been created by statute, or an old one made more penal, the utmost strictness has always been used to comply with the letter of the statute, whatever inconveniencies might result from such a restraint.

As for example:

By the statute of the 39 Elis. cap. 14, clergy is taken away from any person or persons who shall be convicted of taking any money, goods or chattels out of any dwelling-house, &c. in the day time, to the value of 5*s*. One Evans and one Finch were indicted on this statute, 1 Croke, 473, Evans and Finch's case: The case was thus upon the evidence, that Evans by a ladder climbed to the upper window of one Audley's house, and took out thereof 40*l*.; and that Finch stood upon the ladder in view of Evans, and saw Evans in the chamber, and was assisting and helping to the committing of the robbery, and took part of the money: Upon a special verdict it was adjudged, that because Finch did not actually enter the chamber, and take the money, though what he did amounted to a taking by construction of law and was such a taking as made him a felon; yet the very letter of all penal statutes must be pursued, and therefore he, *id est*, Finch, had his clergy, and Evans was hanged.

Numerous cases might be put of this kind of nicety in the construction of penal statutes.

To mention but one more: By the statute of 1 Edw. 6, cap. 12, clergy is taken away from such persons as shall be convicted for the felonious stealing of horses, geldings or mares.—So scrupulously did the judges adhere to the letter of this law, that there was forced to be another statute made, viz. 2 and 3 Edw. 6, cap. 33, to enact, that a person convicted for feloniously stealing one horse, should be ousted of his clergy in the same manner as if he stole two. Nor is it in this case enough to say, the jury are judges of all this: For as the evidence now appears, and is admitted, it is matter of law, how far this evidence, thus admitted on all hands, is sufficient to support this indictment. If it were in a civil case, the party might demur to the evidence. But if he is not allowed that liberty in criminal cases, it is upon the common notion, that the judges are the prisoner's counsel; and are obliged to determine all the matters in law arising upon the evidence, as much as if the persons had demurred to that evidence.

And, as in this case, the prisoner admits the evidence given to be true, and insists upon it, that it doth not support the indictment; and therefore has a right to have the opinion of the judges thereupon, as much as if the evidence were stated at length upon the record (as it must be in the case of a demurrer to evidence,) and nothing ought to be left to the jury, but under the judge's directions as to point of law.

In all these cases, therefore, my lord, it has been usual to allow the fact to be specially found; which gives the prisoner the advantage he might have had by the demurrer of the evidence.

Serj. *Selby.* My lord, I do agree with the prisoner at the bar, that this is a very penal statute, and that these facts must be made out to bring his case within the letter of the act, viz. An intention or purpose, of malice forethought, to maim or disfigure in such a manner as the statute describes; a lying in wait for that purpose; a maiming, or disfiguring accordingly; and an abetting and being privy to these facts: These are all facts which the jury only could determine, either by positive, presumptive, or circumstantial evidence, for no man's thoughts or intentions can be otherwise proved than by his actions. My lord chief justice hath left the whole evidence of all these facts to the jury, who by their verdict have found all these facts as laid in the indictment, against which nobody can now open his mouth: We apprehend, therefore, that no matter of law hath arisen, and that what hath been insisted on by the prisoner, is beside his case, and needs no answer.

Serj. *Branthwait.* My lord, the jury have found him Guilty. I apprehend nothing can properly be alleged now by Mr. Coke, that is contrary to the verdict: If there is any fault in the indictment, we are ready to answer any objections he shall make against it. That he does not pretend to. What is now offered by him is against the verdict, and contrary to what is found by the jury. I beg your lordship's leave to give an answer to the objections he is pleased to make against the verdict, however improperly and out of time made, for the satisfaction of himself, and of the persons here present. I agree a penal act shall not be construed by equity, or carried further than the words or letter of the act, as the cases mentioned by him do prove; but affirm, that this present case is within the words and meaning of the act: For though the ultimate intent of Mr. Coke might be to murder Mr. Crispe (as by him is alleged in excuse for himself) all the means made use of to effect that intent were also on purpose, and such blows could not be given by an instrument, without an intent to maim and disfigure. They were given by one lying in wait on purpose; and the fact and manner of doing the same sufficiently prove, and are a certain and necessary indication of the intent. The defendants might have an intent to cut off, or slit the nose; put out an eye, or dismember; and an intent also to kill and destroy; one intent did take effect, the other not. The defendants ought not to answer for what was not done, but ought to answer for what was done, which was the slitting of Mr. Crispe's nose, on purpose to maim and disfigure him, by one lying in wait; which is all that is required by the act.

As to the objection; that if A and B go together to fight a duel, if A slit the nose of B, this is not within the act; the reason is, because there is no lying in wait.

As to the case of A lying in wait to rob B, I with great submission do say, that if A lie in wait to rob B, and to effect that purpose with the greater ease, A on purpose dismembers B, or puts out his eyes, or does any other fact prohibited by the act; though A be hindered from robbing B, he is within the act of parliament; for the intent and purpose to rob, will be no excuse to one who shall commit the facts prohibited by the act.

As to the case of Evans and Finch, Cr. Car. 473, on 39 El. which takes away the clergy from him that enters and steals: Finch was not within the statute, and had his clergy; for the express words of the statute take away the clergy from him that enters the house, which Finch did not. As to the indictment of a servant for murder, in killing her mistress; it is plain, that it is a crime of a higher degree than murder, it is an offence of another species, it is petty-treason and not murder.

The same answer may be given to the other cases mentioned, where the words of an act of parliament are express. No case shall be construed within a penal act, but what is within the words: But as to the present case, the jury have found every fact that the act of parliament requires, that an unlawful assault was made on Mr. Crispe by the prisoners; that his nose was slit on purpose to maim and disfigure

peared, that the person murdered was her mistress, which made the crime petty treason: this was found specially, and upon conference with the judges, they were of opinion, that the woman ought to be acquitted upon this indictment.

Admitting this case to have been adjudged, I apprehend it does not affect the present case.

The law has distinguished crimes under different denominations; and as offences are ranked under different species, so the indictment must be suited to that sort of crime whereof the party is guilty; and therefore proving a person guilty of a fact, known in the law by the name of petty-treason, does not prove him guilty of an indictment for murder; murder being an offence which the law has distinguished from petty-treason, and to which it has assigned a different punishment.

But in the present case, that offence which is charged in the indictment, is proved in every circumstance, and the facts proved do constitute that crime which is made felony without clergy by the statute. The statute requires lying in wait, it requires malice forethought, it requires slitting the nose, &c. with intent to maim, &c. The indictment charges these facts, the witnesses have proved these facts to the satisfaction of a jury, which have found the defendant guilty of the charge as laid.

The prisoner says farther, that this is a very penal statute, and that penal statutes are always taken with the utmost strictness; and to prove this, cites a case adjudged on the statute 39 Eliz. by which statute clergy is taken away from any person or persons, who shall be convicted of taking away money, &c. in any dwelling-house, &c. in the day-time, to the value of 5*s.*: and to prove the same matter, an instance is likewise put of the construction on the statute, 1 Eliz. cap. 12, which takes away clergy from such persons as shall be convict of feloniously stealing horses, &c. The case in the statute 39 Eliz. is the case of Evans and Finch, Cro. Car. 473, in which case Finch had his clergy, because he did not actually enter the chamber and take the money. The construction on Edw. 6. was, that clergy was not taken away from a person who feloniously stole one horse.

But I apprehend neither of these cases come up to the case now before your lordship. As to the case of Evans and Finch, which was a case upon the statute 39 Eliz. By that statute a person is ousted of clergy who takes away money to the value of 5*s.* in any dwelling-house, &c. Finch did not enter into the house, for he only stood on the ladder; and therefore he was not within the words of that statute, which spoke only of persons who took away goods in an house, &c.

As to the construction upon the statute 1 Edw. 6, it is plain that the felonious stealing one horse could not be within an act of parliament, which took away clergy only from such persons as feloniously stole horses. The reason, therefore, of these cases was, that the facts proved did not bring the persons accused within the words of the statute.

But it is not so in the case now before your lordship; for the prisoner is found guilty of a fact, which is within the words of the statute upon which he is indicted; and every circumstance required to make him guilty of the felony mentioned in the statute has been very fully proved.

My lord, I am very sensible that the objections taken at the bar being after verdict, did not require these particular answers; but this being a case wherein life is concerned, I hope the impropriety will be excused.

L. C. J. I do agree with the prisoner, that this is a penal law, and not to be extended by equity: that he that is guilty within this statute, must be guilty of all the circumstances within it; and if any one of the circumstances prescribed by the statute be wanting, he is not guilty. And therefore in all those cases put by you, if any one of the circumstances prescribed by the statute be wanting in any one of them, such case is out of the statute. But whether all the circumstances required by the statute did not concur in your case, was a matter of fact, which the jury, who are the proper judges, have tried; and on such trial they have found them all to concur. You seem to argue upon a supposition of this fact to be otherwise than the jury have found it. The jury have found you guilty of all the circumstances within the statute. There was no matter of law in this case, but matter of fact; whether on purpose, and of malice fore-thought, and by lying in wait, the nose of Mr. Crispe was not slit, with intention, in so doing, to maim or disfigure? And whether you were not feloniously present, aiding and abetting? The jury had the whole evidence before them; they considered of the whole matter, of the preparation and lying in wait to do the fact, of the fact itself, of the means and instrument made use of to do it; of the manner of doing it, and of all the other circumstances and particulars relating to the fact: and on the whole, after they had withdrawn, and considered amongst themselves for some time, they have found you guilty within the terms and circumstances of the statute; so that though all the cases put by you should be very good law, yet they do not any wise affect yours, because you are actually found guilty of the crime itself: have you therefore any thing to say against the indictment itself?

Coke. No, my lord; I hope I have one glimpse more from the king's most gracious pardon, that was published in the Gazette.

L. C. J. If you offer any pardon by act of parliament, or under the great seal, I must take notice of it, and allow it to you; but if you mean only a promise of a pardon in the Gazette, or other public advertisement, you must apply for that in another place; this doth not belong to me.

Coke. I hope that I shall have the benefit of the pardon that was promised; and that his majesty will be graciously pleased to grant itme.

L. C. J. If you have a right to it, you need not doubt but you will have it: his majesty is so just, that he will make good whatsoever he hath promised; but for this, your application must be immediately to his majesty.

Coke. I beg of your lordship that you will give me time, that I may not be hurried out of the word presently.

L. C. J. I shall consider of it, and give you a convenient time.

Cl. of the Arr. Cryer, make an O Yes.

Cryer. Our sovereign lord the king doth straitly charge and command all manner of persons to keep silence, whilst judgment is giving upon the prisoners convicted, upon pain of imprisonment.

L. C. J. You that are the prisoners at the bar, you have been indicted and convicted of very great and heinous offences; I am very sorry that you have been the occasion of bringing yourselves to unfortunate ends, and that there is this melancholy necessity on me to pronounce the sentence of death upon you: but on fair trials the jury have found you guilty, and by the law you have forfeited your lives.

Coke. My lord, I am ashamed of myself; I did not expect to appear at this time in this place, where I have appeared in another manner.

L. C. J. I am sure, Mr. Coke, you ought seriously to reflect on your past life: you cannot but own that you have been a great sinner; you have had malice in your heart against this gentleman above three years.

Coke. Indeed, my lord, I know nothing of it.

L. C. J. Moon hath sworn, that three years, or three years and a half ago, you sent to him, and proposed to him the knocking Mr. Crispe on the head.

Coke. I do declare it, my lord, as I shall answer it at the great day, I never spoke to Moon about any such thing.

L. C. J. Supposing what Moon had said to be too much, yet the crimes you own and cannot deny are exceeding heinous. You own that you invited your brother to sup at your house, on purpose that you might have an opportunity of murdering him. This is such a crime as shocks human nature: the bare mentioning of it is frightful and terrible. The deeper therefore your crime is, the deeper your repentance ought to be. You have need to humble yourselves before Almighty God. Besides the judgment of the law, there is also his judgment-seat, before which you must likewise appear: there all things are naked and bare, without colour or disguise; every man must there appear, and receive according to the truth of his actions, as they were good or bad. How far it may please God to extend his mercy to you, I know not; he is infinite in mercy as well as in every other perfection: and this we are sure, that he never denies it to any who are prepared to receive it. Endeavour therefore to reconcile yourselves to him; improve with diligence the little time that may be allotted you: send for proper persons who may advise and assist you: for as to the judgment of the law which is to be now pronounced upon you all, it is this:

'That you, and each of you, go from hence 'to the place from whence you came, and from 'thence to the place of execution, where you 'shall be severally hanged by the neck till 'you be severally and respectively dead; and 'the Lord have mercy upon your souls.'

Then the keeper carried away the prisoners to the gaol to be reserved till their execution. And on Saturday the 31st of March, 1722, they were executed at Bury St. Edmond's.

463. The Trial of Christopher Layer, esq. at the King's-Bench, for High Treason,* Nov. 21: 9 George I. A. D. 1722.

On Wednesday the 31st of October, Christopher Layer, esq. was brought to the bar of the Court of King's-bench at Westminster, upon a Habeas Corpus, directed to the lieutenant of the Tower of London, in order to be arraigned on an indictment for High-Treason in compassing and imagining the death of the king, found by the grand jury for the county of Essex before special commissioners of Oyer and Terminer.

Serj. *Pengelly.* My lord, we pray the return of the Habeas Corpus may be read.

Mr. *Harcourt*, Clerk of the Crown, reads the return of the Habeas Corpus, by which it appeared that the prisoner was committed to the Tower for high-treason.

Serj. *Pengelly.* We pray that the return may be filed.

L. C. J. (Sir John Pratt.) Let it be filed.

Serj. *Pengelly.* My lord, there is an indictment of high treason found in the county of Essex against Mr. Christopher Layer, which hath been removed into this court by Certiorari; the Certiorari, and the return thereof hath been filed, and the prisoner is now brought into court in order to be arraigned.

L. C. J. Read the indictment.

Cl. of the Cr. Christopher Layer, hold up your hand.

"You stand indicted by the name of Christopher Layer, late of the parish of St. Andrew's

* See 8 Mod. 82.

Holborn, in the county of Middlesex, esq. for that you being a subject of our most serene lord George, now king of Great Britain, France and Ireland, defender of the faith, &c. not having the fear of God in your heart, nor weighing the duty of your allegiance, but being moved and seduced by the instigation of the devil, as a false traitor against our said lord the king, your supreme, true, lawful, and undoubted lord; withdrawing that cordial love, and true and due obedience, fidelity, and allegiance, which every subject of our said lord the king towards him should, and of right ought to bear; and designing, and with all your might traitorously intending the government of this kingdom, under our said lord the king duly and happily established, to change, alter, and subvert; and our said lord the king of and from the title, honour, royal estate, empire and government of this kingdom to depose and deprive; and our said lord the king to death and final destruction to bring and draw; and the person during the life of the late king James the second, pretended to be prince of Wales; and after the decease of the said late king, pretending to be, and taking upon himself the stile and title of king of England, by the name of James the 3rd, to the crown, royal state and dignity of king of this kingdom, and to the empire, government and possession of the same, to exalt and bring, the 25th day of August, in the ninth year of the reign of our said sovereign lord the king that now is; and at divers other days and times, as well before as after, at Laytonstone in the said county of Essex, falsely, maliciously, devilishly, and traitorously did compass, imagine, and intend, our said lord the king, your supreme, true, lawful, and undoubted lord, of and from the title, honour, royal estate, empire and government of this kingdom to depose and deprive; and our said lord the king to death and final destruction to put and bring. And that you the said Christopher Layer, to accomplish and bring about your said treason, and devilish and traitorous intents and purposes, did, with divers other false traitors to the jurors unknown, on the said 25th day of August, in the said ninth year of the reign of our said lord the king, and at divers other days and times, as well before as after, at Laytonstone aforesaid, in the said county of Essex, by force and arms, &c. falsely, maliciously, devilishly, and traitorously did meet, propose, consult, conspire, consent and agree, to move, raise, and levy insurrection, rebellion, and war, within this kingdom against our said lord the king, for the traitorous purposes aforesaid. And that you the said Christopher Layer, for the more effectual completing and perfecting the said treason and traitorous intentions and purposes, on the said 25th day of August, in the ninth year aforesaid, at Laytonstone aforesaid, in the said county of Essex, by force and arms, &c. maliciously and traitorously did publish a certain malicious, seditious, and traitorous writing, containing and purporting (amongst other things) an exhortation, incitement, and promises of rewards, the faithful subjects of our said lord the king to persuade, move and excite, to take up arms, and to levy and make war within this realm, against our said sovereign lord the king, for the traitorous purposes and intentions aforesaid. And that you the said Christopher Layer, for the more effectual completing and perfecting the said treason and traitorous intentions and purposes, with other false traitors, to the jurors unknown, on the said 25th day of August, in the ninth year aforesaid, and at divers other days and times, as well before as after, at Laytonstone aforesaid, in the said county of Essex by force and arms, &c. falsely, maliciously, devilishly, and traitorously did meet, propose, consult, conspire, consent, and agree, by an armed force, and by soldiers to be raised and got ready for the traitorous purposes aforesaid; the said person, during the life of the said late king James the second, pretended to be prince of Wales, and since the decease of the said late king, pretending to be, and taking upon himself the stile and title of king of England, by the name of James the 3rd, to the crown, royal estate, and dignity of king of this kingdom, and to the empire, government, and possession of the same to exalt and bring, and that you the said Christopher Layer, for the more effectual completing and perfecting the said treason, and traitorous intentions and purposes aforesaid, on the said 25th day of August, in the ninth year aforesaid, and at divers other days and times, as well before as after, at Laytonstone aforesaid, in the said county of Essex, by force and arms, &c. maliciously and traitorously did get ready, raise, and retain several men, to the jurors unknown, to take up arms, and to levy and wage war within this kingdom, against our said sovereign lord the king, for the traitorous purposes aforesaid: and that you the said Christopher Layer, for the more effectual completing and perfecting the said treason, and traitorous intentions and purposes aforesaid, on the said 25th day of August, in the ninth year aforesaid, and at divers other days and times, as well before as after, at Laytonstone aforesaid, in the said county of Essex, with other false traitors, to the jurors unknown, by force and arms, &c. maliciously, devilishly, and traitorously did meet, propose, consult, conspire, consent and agree, the sacred person of our now sovereign lord king George, for the traitorous purposes aforesaid, most wickedly to take, seize, imprison, and detain in custody against the duty of your allegiance, against the peace of our said sovereign lord the king, his crown and dignity, and against the form of the statute in that case made and provided."

Prisoner. If your lordship will please to indulge me;

My lord, I am brought here in chains, in fetters and in chains. My lord, I have been used more like an Algerine captive than a free-born Englishman: I have been dragged through the streets by the hands of gaolers, and have been made a shew and a spectacle of.

I am now in a court of justice before your lordship, and hope the time will come when I shall have a candid and fair trial, and not be made a sacrifice to the rage and fury of any party, or the necessity of the times. My lord, I had not said this, but I have been insulted since I came into the hall: a gentleman came and told me, "Either you must die, or the plot must die." My lord, this is usage insufferable in a Christian nation; and I think I can lay my hand upon my heart, and say, I have done nothing against my conscience.

Serj. Pengelly. If Mr. Layer hath any objections to the indictment he may make them, but should not go on in this manner.

Prisoner. My lord, I hope I shall have these chains taken off, that I may have the free use of that reason and understanding which God hath given me. They have given me the strangury to that degree that is very painful, and I am told your lordship is afflicted with that distemper. I hope these chains shall be taken off in the first place, and then I hope I shall have a fair and tender trial.

L. C. J. There have been a great many things said, but which we cannot examine into. You have given a general charge of some people using you ill, your expressions are not just and right; you charge no particular person; we can take no notice of them. As to the chains you complain of, it must be left to those to whom the custody of you is committed by law, to take care that you may not make your escape; when you come to your trial then your chains may be taken off. Consider the matter of this day; if you have any objections to the indictment the Court will hear them; if not, you must plead.

Att. Gen. (Sir Robert Raymond.) I am sure nothing is intended but that he should have a fair trial; but to complain here of hard usage, of chains and imprisonment, carries with it a reflection of cruelty, and we know what effect these things may have abroad. My lord, I do not believe there is any occasion for saying any thing more in answer to this, than that the prisoner hath been kept, as all persons in his circumstances are, when they have been attempting to make an escape; there was an attempt of that nature made by him, and I believe nobody will say, but on such an occasion, there is reason to take particular care that he may not escape. My lord, as to any other matters of hardship, I hope what he says is not so; I verily believe it is not, but that he has as much freedom and liberty as is proper and usual. And as to what is said in respect to the man that insulted him in the hall, I know nothing of it, nor heard of it before; but cannot but observe, that it is an easy matter for people to contrive such a thing in concert together, with some particular views; and I do not know but if the fact was so, it might be somebody set on by himself that did it.

L. C. J. Alas! If there hath been an attempt to escape, there can be no pretension to complain of hardship: he that hath attempted an escape once, if true, ought to be secured in such manner as to prevent his escaping a second time. The gentleman gaoler, what doth he say?

Gentleman Gaoler. My lord, he never attempted to escape since he was in my custody.

Att. Gen. No, it was before.

Sol. Gen. (Sir Philip York.) My lord, this complaint is made for no other purpose but to captivate the minds of the by-standers, without any just grounds in the world; for if the whole of the complaint made and aggravated in this solemn manner be considered, it amounts only to this, that a prisoner who stands charged with so great an offence as high treason (who I admit, notwithstanding the weight of that charge, ought to have all the justice and all the opportunity of defending himself which the law allows) I say it amounts to no more than this, that a prisoner in these circumstances is brought up hither under a guard, and in fetters, as persons in that condition usually are. It is very well known that when this gentleman was in the custody of a messenger, he not only made an attempt to escape, but actually escaped, got out of a window two pair of stairs high, and from thence over the water into Southwark; and since that is so, can there be any colour to say that what was done afterwards was unwarrantable? I cannot help saying on this occasion, that it does not become the candour a person in the prisoner's circumstances ought to shew, to aggravate and make such a misrepresentation of the usage he has received. As to what has happened in the hall we know nothing of it, nor can possibly tell how true it is. If any such thing was said, it is not impossible to have been by somebody that was set there on purpose by the friends of this gentleman. I say thus much, my lord, not because I think it material to the business of this day, but because I would not have it gone away with that there has been any hardship put upon the prisoner contrary to law. No, his majesty, who makes the laws of the land the rule and measure of all his actions, though he will have justice done to himself and his government against any person that shall conspire to overthrow it, yet he will suffer no hardships to be done even to such persons, contrary to law; and nothing has been done in this case but what was legal and absolutely necessary.

Mr. Hungerford. My lord, I beg to be indulged a few words; that he is in chains now is demonstrable; and he hath told me, when in the Tower with him, that they are so grievous to him that he cannot sleep but in one posture, viz. upon his back; and that he hath not attempted to escape out of the Tower, is given in evidence by the gentleman gaoler, who hath, and will, I verily believe, execute his authority with all humanity, for he now helps to hold up his chains, otherwise the prisoner could not stand. My lord, it is said it is nothing but what is usual in cases of this nature. My lord, I believe I might challenge them to

give an instance where any prisoner was shackled with irons in the Tower before Mr. Layer; his majesty's prisoners of the Tower are such strangers to this usage, that they had not the very materials there, they were sent for from Newgate, and I hope they will be carried back again thither. Your lordship hath hinted it as an indulgence intended to him when he comes to his trial, that his irons shall be taken off: but I humbly insist upon it that by law he ought not to be called upon, even to plead, till his fetters are off. My lord Coke, (3 Inst. 35,) is clearly of that opinion in his Pleas of the Crown; and is admitted on all hands, that when he comes to be tried his shackles must be off, and upon a debate it was so determined in Cranburne's Case, (vol. 13, p. 222.) The only reason assigned for putting of irons at all upon a prisoner, is to keep him in safe custody (for the laws of England allow of no tortures) and the reason why they are taken off in the course of proceeding against him in a court of justice, it seems to be, that his mind should not be disturbed by any uneasiness his body or limbs should be under; and as to the distinction that his chains should be on when he pleads, because but for a moment, or a short time, and off when he is tried, because that will be of longer duration; it is possible that what we have now to say may be as long as some trials. I should (with submission) think that something of the dignity of the Court might be considered in this matter, for a court of justice, the highest in the kingdom for criminal matters, where the king himself is supposed to be personally present, to have a man plead for his life before them in chains, seems to be very unsuitable. He is now before the same awful and just tribunal which he will be before when he is tried, and why not therefore without chains as well now as then; and as to the safe custody intended by the irons, is the man like to run away here? Is he not here too well guarded to escape?

Mr. *Ketelbey*. If your lordship please to favour me a few words. My lord, what hath been his usage in bringing him up hither I cannot tell; what the usage of the Tower is with respect to the putting chains upon prisoners, I am ignorant of; but this I must beg leave to say, that he is entitled to have his chains off before he pleads,* in point of law: the authorities for it are my lord Coke in his third Inst. fol. 34, who says, that "When prisoners come in judgment to answer, they shall be out of irons, and all manner of bonds, that their pain may not take away their reason, nor constrain them to answer, but at their free will;" (Brit. c. 5, fol. 14,) and in fol. 35, he cites the words out of the Mirror, chap. 5, sect. 1, "It is an abuse that prisoners be charged with irons, or put to any pain before they be attainted." At the trial of Cranburne, when he was brought up here before my lord chief justice Holt, he insisted that his chains should be taken off before he pleaded, and it was ordered. This was likewise mentioned in the trials of Dorrel, Gordon, and Kerr; when they came up in their irons to plead, it was moved at first that those irons ought to be taken off. The Court declared, that if the prisoners insisted on it, it ought to be done: but they did not insist on it, they rather chose to wave that privilege than undergo the trouble of having them knocked off in court. There is a resolution in this case. In the 10th fol. of Kelyng, it is expressly declared on a consultation of all the judges in England, That a prisoner ought to have his irons taken off before he pleads.

L. C. J. The case of Cranburne, you will find that authority is when the party was called upon to plead, and was tried at the same time.

No doubt when he comes upon his trial, the authority is that he is not to be 'in vinculis' during his trial, but should be so far free, that he should have the use of his reason, and all advantages to clear his innocence. Here he is only called upon to plead by advice of his counsel; he is not to be tried now; when he comes

* "Cum autem capti in judicio produci debeant, non producantur armati, sed ut judicium recepturi, nec ligati, ne videantur respondere coacti, Fleet. lib. 1, cap. 1.

"The prisoner at the time of his arraignment ought not to be in irons. Hales's P. C. p. 218. Tit. Arraignment. See H. P. C. in folio, second part, cap. 28.

"See Hawkins's Pleas of the Crown, part 2, p. 308."—*Note to Former Edition.*

See more as to this in vol. 5, pp. 379, *et seq.* of this Collection, and Leach's Hawk. Pl. Cr. book 2, chap. 28, sect. 1.

Sir James Burrow has reported (vol. 3, p. 1809,) a case in which it appears, that three prisoners were kept chained during the trial of issues concerning their identities. The substance of the case is as follows: "Thomas Rogers, Samuel Matthews, and John King, had been capitally convicted for felonies in robbing on the highway, and received sentence of death for the same. While they were in custody upon those convictions, they murdered their keeper, and then broke out of their prison, and were during a considerable time a terror to the neighbouring country. Being afterwards retaken, they were together brought by writs of Habeas Corpus to the bar of the Court of King's-bench, and there respectively asked, what they had to say why the Court should not proceed to award execution, &c. each of them denied his identity, and issue being joined on each of those denials, those issues were severally tried *instanter*: verdicts were found against all the prisoners, and execution was awarded against each of them, according to his former judgment and sentence." The report is thus concluded: "Memorandum: These desperate fellows remained chained together, during this whole proceeding." But the reporter mentions, (p. 1810,) that while the issue in the case of one prisoner was tried, the two other prisoners were permitted to sit down.

to be tried, if he makes that complaint, the Court will take care he shall be in a condition proper to make his defence; but when he is only called upon to plead, and his counsel by him to advise him what to plead, why are his chains to be taken off this minute, and to be put on again the next? It hath been said (I cannot understand the meaning of it) he is too well guarded, I do not think a man charged with high treason of this nature, can be said justly to be too well guarded, especially if it be true what hath been suggested, that he hath endeavoured to make his escape; that will justify more than what the law allows in other cases.

Mr. *Hungerford.* My lord, I beg leave to explain myself, what I mean by saying too well guarded, I mean sufficiently guarded.

L. C. J. Have you any thing more to offer? This is nothing but to captivate the people, and to make impressions upon them that are not just, or else what signifies his chains being taken off this minute, and afterwards put on again the next? This is nothing but to bring the people to have an unjust sense of the crime with which he is charged.

Mr. *Hungerford.* My lord, we might humbly apprehend and hope that the better to prepare himself for his trial, he might continue without his chains until after that time.

L. C. J. I am of another opinion; and if we should order his chains to be taken off, and he escape, I do not know but we are guilty of his escape. As your client hath said, he shall have a fair and a just trial; but to make objections in matters of this nature, is to cast a reflection on the Court, for not doing that which is not in their power to do.

Mr. *Hungerford.* I am, my lord, of counsel with the prisoner, I have been so appointed by your lordship, and I assure your lordship that I, and I dare answer for the other gentleman that is concerned in the same service with me, shall make use of that power and privilege you are pleased to give us, as we ought.

My lord, I have looked over the Record and the Indictment, we have a copy of both, according to the direction of the act of parliament: I know we have at present a right to object to four sorts of things, viz. miswriting, mis-spelling, false or improper Latin: we are confined to make whatever objections occur to us on these heads at this time, and have not the liberty to make it afterwards; but there are likewise some objections of another nature, which we may have liberty to make at another time.

I have here in my hand the whole record delivered to the prisoner, in which, not only the Indictment is set forth, but the commission of Oyer and Terminer. After the commission hath enumerated the names of the commissioners, it goes on and says, what are the offences that they are authorized to enquire of, as high-treason, misprisions of treason, and other offences of a lesser degree; then it goes on and says what the persons shall be, concerning whom this enquiry shall be made, "Et per quos vel per quem, cui vel quibus, quando, qualiter, et quomodo, et de aliis articulis et circumstantiis, præmissa et eorum quodlibet seu eorum aliquod vel aliqua, qualitercunq; concernen', plenius veritat'." My lord, I have looked into this form, and considered the words with all the accuracy I can, and have endeavoured to render them into English, but cannot; I must say I look upon those two words 'plenius veritat',' as placed in this record, to be nonsense, and not capable of being rendered into English, for they import no meaning at all. It is a blemish in the commission itself, and if so, the enquiry taken by virtue of that commission must fall to nothing, and consequently this indictment must be naught. I have been so exact, I have looked into the forms of these indictments, taken by virtue of commissions of Oyer and Terminer. My lord chief justice Coke hath for the sake of posterity, I suppose, given us the form of the commission of Oyer and Terminer in his time; in that form of his these words are entirely left out; they seem to me to be words of no signification, therefore we hope there shall be no further proceedings till this is set right, and that the indictment shall be quashed.

Mr. *Ketelbey.* My lord, there are other objections, whether it is your lordship's pleasure that we should go on this first, or that we should mention the others, and so go upon them all together?

L. C. J. Make all your objections together.

Mr. *Hungerford.* Then, my lord, in the close of this commission it is said the jury were charged to enquire, but doth not say for what; but that objection may be made another time, and therefore I will not trouble your lordship with it now. My lord, the first thing that occurs to me in the indictment itself, and which certainly, if we prevail in, the whole proceedings are wrong; this gentleman's name is not writ nor spelt right, 'Jurator' pro Dno' Rege, &c. super sacramentum, &c. quod Christopherus Layer, Christopherus is there writ with an *e*, whereas it should be Christophorus with an *o*; and if the Dictionaries and Lexicons are any authority we are right. These are the objections which have occurred to me, the gentleman joined with me in this service, hath some other remarks to make.

Mr. *Ketelbey.* My lord, as it is your lordship's pleasure to appoint us to be counsel for this gentleman, I shall not make any apology for our appearing on his behalf, lest I receive the same reproof from the Court, which a gentleman in my station once received upon a like occasion.*

My lord, we think it proper at this time to lay these four points under your lordship's consideration, which if we had staid till after plea pleaded by the prisoner, would have been

* Qu. Does this refer to what Holt, Chief Just. said to sir Barth. Shower, in Rookwood's Case? See vol. 13, p. 154.

too late; that matter hath been often settled and determined by your lordship, and I shall say no more to that, I believe they do not object to it; now therefore it is the only time to make these objections.

My lord, the first that hath been mentioned by Mr. Hungerford is in the caption of the indictment as to these words 'plenius veritatem;' in our copy, it is 'plenius veritat'' with a dash, that it may be taken in any case, but I submit it to your lordship whether it can be made sense, or is proper Latin in any of the cases either of the singular or plural number, that there can be made any grammar of it, or that there is any regular or preceding verb that can govern it in any case whatsoever: they might have put in any words entirely inconsistent with respect to the part preceding or subsequent; leave out these words, and the other part of the sentence is plain and intelligible; but put in the words, and it is otherwise.

And especially since we have the authority of my lord Coke, where these words are not in; how they came to be put in, or of what use they are, your lordship will observe on reading the caption of the indictment, 'Ad inquirend', &c. plenius veritat'.'

Taking exceptions to the caption of the indictment hath formerly been objected to; but I believe that right cannot be disputed at this time.

As to the second exception, that in relation to 'Christopherus,' we submit it to your lordship, if that be not expressly within the defects mentioned in the act of parliament, mis-writing, mis-spelling, false and improper Latin; nay, whether it is not subject to censure under each of these four heads.

My lord, it was impossible to bring all my authorities, upon this point, along with me; but I have here in court several of the best dictionaries and lexicons which shew the true word to be 'Christophorus;' and I believe the gentlemen of the other side cannot produce one instance in any authentic book either Greek or Latin, but it is always spelt with an *o* and not with an *e*, it is Christophorus from φέρω the 'præteritum medium' of the Greek verb φέρω; and the rules of etymology and formation of Greek verbals evince that it must be so, and cannot be otherwise; and by all the Latin dictionaries, the Latin word for Christopher is 'Christophorus.'

L. C. J. How do we know what his name is? You must plead it in abatement; we don't know his name; he might be christened 'Christopherus' for aught we know.*

Mr. Ketelbey. My lord, for false spelling—

L. C. J. How doth that appear to us? You are wrong in making your objection at this time, we can't take notice what his name is; in the record of the indictment he is called 'Christopherus.' Can we enquire what his true name is, whether in English it is Christopher, or 'Christopherus?' We can't tell what his name is, perchance his name may be 'Christopherus,' and the name by which he might be christened; I desire I may not be understood as if I would prevent you from offering any thing that is material for your client; but if I can satisfy you that you are improper in form, it may save the time of the Court; but if you can offer any thing material, we are ready to hear it.

Mr. Ketelbey. My lord, I hope your lordship will pardon me, here is the life of a man concerned, and as I would not willingly offer any thing to your lordship that in the like cases hath been over-ruled, so neither would I omit any thing that may be material for the prisoner, whose defence the Court has intrusted us with; therefore I will go on to the other objections that we think to be improper Latin; 'compassavit, imaginatus fuit, et intendebat.' These are the words, I don't know whether this Latin will go down in Westminster-hall, but I am satisfied it would not in Westminster-school.

Here is the 'et, intendebat, et,' a conjunction copulative between verbs in several tenses; here is 'compassavit' the preterperfect tense, 'imaginatus fuit,' the preterperfect tense, and 'intendebat' the preterimperfect tense: Why should not the last verb have been put into the preterperfect tense, according to the rules of classical Latin, as well as the two former? Therefore we submit it how far it will go as to vitiating the indictment in point of false Latin.

My lord, there is one word more, 'seisiend'' the overt-act, as laid in the indictment, is, that the prisoner 'conspiravit ad sacram personam domini regis capiend', seisiend', et imprisonand';' by the words that are coupled with it, I suppose 'seisiend'' is intended to mean, the taking or laying violent hands upon his majesty's person; but sure there was never such a word in any indictment before, nor to be found in any author whatsoever; it is neither classical Latin, law Latin, nor to be met with among Littleton's barbarisms, never naturalized nor inoculated into ancient or modern use; it is a mere fictitious word coined for this very purpose without any precedent, any one instance to warrant it.

My lord Coke, in his 1st Instit. fol. 17, says, that the word 'seisitus' cometh of the French word 'seisis,' and that in the common law it is properly applied to freehold, in contradistinction to 'possessionatus,' which relates to chattels: For 'seisitus' and 'possessionatus' are mentioned as terms of art, technical words in the law, that by long use have acquired to themselves one peculiar and determined signification; for that reason I do not object against the word 'compassavit' in this indictment, it having been always used in indictments of high-treason to express compassing the death of the king, ever since the statute of Edward the 3d; so murdrare, felonia, and several others, are known terms of art in the law. But,

* See the Case of the king against Samuel Shakespeare, 10 East, 83, which was a plea in abatement of a misnomer in the surname.

where did they meet with the word 'seisiend'?' And if they would fancy it to be a gerund of some unknown active verb, how came they to give it this sense, to make it signify the same as 'capiendum?'

My lord, I must beg leave to say, that I apprehend the very gist of this indictment, (at least so much of it as relates to this overt-act) entirely depends upon this word 'seisiend';' and if it does appear to your lordship to be insignificant, barbarous, false or improper Latin, I hope we are proper under the authority of the late act of parliament, humbly to insist upon this objection, and that it is sufficient to overthrow the whole indictment.

My lord Coke, in Calvin's case, says, that indictments for high-treason ought to be drawn with the greatest accuracy and nicety; but if Mr. Attorney will please to shew me, that this word was ever once used to this purpose, I will waive my objection, and admit it to be as elegant a word as any in the whole indictment.

L. C. J. I think before the king's counsel make any answer to that, we had best have that part of the indictment read, that we may the better judge of it.

Cl. of the Cr. reads, 'Quod tu Christopherus Layer, &c. ad capiend' seisiend' et imprisonand',' &c.

L. C. J. 'Ad capiend' et imprisonand'.' Won't these words do, suppose the other word 'ad seisiend'' insignificant?

Ser. *Pengelly.* My lord, these objections have been made with so much ceremony, and ushered in with such pomp, as if something else was meant, than the quashing this indictment.

We apprehend some of them are improper, and others which may be proper at this time, are of no force.

The objections to the commission, we apprehend are improper; it is not in the power of the Court to quash the commission, and therefore to make mention of mis-spelling, and of false and improper Latin therein, signifies nothing. As to the indictment itself, the Court hath a power, and if they think proper, if there be sufficient cause may quash it; but the commission issues under the great seal, and that part of it returned here, is not under the power of this court to destroy; but upon reading it, we think this objection will quite vanish; these words are used in all commissions of the like nature, and are inserted in the very form of the commission, and the caption of the indictment published in the treatise, allowed by all the judges of England, called, "A Collection of Statutes relating to High Treason, composed for the assistance of the justices in Scotland;" and because of the supposed difficulty of understanding these words, I will, for the sake of the gentlemen of the other side, read them in the order they are to be construed, thus, 'Ad 'inquirend' plenius veritatem per sacram' pro-'bor' et legal' hom' &c. de quibuscunq; pro-'ditionibus, misprisionib', &c. per quoscunq; et 'qualitercunq; hit' fact', &c. se de aliis arti-'culis, &c. et ad easdem proditiones et al' pre-'miss' audiend' et terminand';' here they are to enquire more fully the truth, of and concerning all treasons, misprisions of treason by any person whomsoever committed, &c. And if the words 'plenius veritat'' had immediately followed the word 'inquirend'' every body at first reading must be satisfied that no objection could be made thereto; and the objection now is only made on account of the placing these words at the end of the sentence. But it makes no difference in the construction or sense; how otherwise can it be construed or understood? But to enquire more fully the truth of those offences there enumerated, and what persons are guilty, &c. And therefore I take it, that the form of the commission is proper, and will be justified, not only by the sense of it, but by the usual and common course of proceedings.—As to the next objection, we apprehend that hath been already over-ruled; the word 'Christopherus' with an *e*, and not with an *o*: And if there be any difference in the name, that must be pleaded in abatement; because if they would take advantage of it, they must plead that his name is otherwise than is expressed in the indictment. This man's name 'Christopherus' may be with an *e* as well as an *o*, for aught appears: But we apprehend, that the name Christopher is seldom writ in Latin with an *o*, but usually with an *e*; if they think there is any thing material in the objection, let them plead it in abatement, and we are ready to answer them.

My lord, as to the next objection, that the three verbs which charge the high treason, viz. 'Compassavit, imaginatus fuit, et intendebat,' that they are not in the same tenses; we submit that in the strictest Latin, there is no necessity the last verb should be of the same tense with those that go before the copulative (et): Sure, though 'compassavit' and 'imaginatus fuit' be in the preterperfect tense, yet 'intendebat' may be well added in the preterimperfect tense, and that will make no difference, they being all three alleged and found in the time past, before the indictment exhibited.

My lord, the next objection which they seem to rely upon, is at the conclusion of the indictment, and that is to the word ('seisiend', &c.') They say, the precedents have been looked into, and there is no such word to be found in any indictment of high treason; I beg leave to say in answer, that since the assassination plot against king William, there hath been no such villainous attempt of this nature; therefore no wonder if it cannot be found in other indictments where there has been no occasion for the word. This is an overt-act of conspiring and agreeing to take, seize, and imprison the very person of the king; and it must be laid according to the fact itself; but if this be not a proper word, though I think the word is proper and significant, yet because this is not made use of in alleging the treason itself, but the overt-act or evidence of the treason, it will not

vitiate that part of the indictment: for if any one of these words alleged is proved upon the trial, the prisoner ought to be found guilty, whether he compassed to take the person of the king, or to seize his majesty, or to imprison and detain him; any one of these attempts is sufficient, if proved, and the prisoner ought to be convicted. There was an objection of this nature taken upon one of the trials for high treason, before my lord chief justice Holt; but he was pleased to say, that in alleging the overt acts, where several overt acts are alleged, or several words are used to express the same overt act, if they were mistaken in one of the words, yet if there were other words sufficient in the indictment to express the overt-act; or although one entire overt act was insufficiently alleged, yet if there was another overt act well laid, the Court would not quash the indictment, because this would be to deprive the crown of the right of giving evidence to prove any other part of the same overt act, or any other overt act alleged in the indictment; so that we hope this is not a proper objection, because the Court cannot quash the whole indictment if any other overt act is sufficiently expressed, but the indictment must stand.—But the word is proper, because the words 'seisire ad seisiend' ' are terms known in the law, and it is frequently used in actions of trespass, 'quod cepit, seisivit, et abduxit,' or 'asportavit.' My lord, we think the word 'ad seisiend' ' is a proper expression in this case, to signify the attempt or design to seize and apprehend the person of his majesty; and we hope there is nothing in these objections.

Att. Gen. My lord, we are not against the gentlemen of the other side's insisting upon every thing that may be for their client's service. But sure these objections have nothing in them; there is no colour of reason to support them. My lord, as to the exception taken to the commission let us consider, if there was any weight in it, how it can possibly be taken at this time?—By virtue of the act of parliament passed in the 7th year of the reign of his late majesty king William, it is provided, that no indictment for any of the offences afore-mentioned in that act, which are treasons, &c. nor any process or return thereupon, shall be quashed on the motion of the prisoner or his counsel for mis-writing, mis-spelling, or false or improper Latin (under which last words the counsel for the prisoner would entitle themselves to take this objection) unless such exception shall be taken and made in the respective court, where such trial shall be, by the prisoner or his counsel assigned, before any evidence given in open court upon such indictment.—But the commission is a thing distinct, and neither indictment, process, or return thereupon; and by consequence no objection can be made to the commission at this time by virtue of that act: but however, because they may not trouble us with these objections at another time, we beg leave to answer them now.

My lord, these words ('plenius veritatem') are the very point of the enquiry of the commissioners of Oyer and Terminer, for they are to enquire, by the oaths of lawful men of the country, fully of the truth of all treasons, misprisions of treasons, &c. committed in that county, and that is the tenour of the commission. In the book printed by the approbation of all the judges of England, soon after the union of the two kingdoms, all the rules and methods of trial in cases of high treason are laid down, there is the commission of Oyer and Terminer printed at large; and it is exactly in the same words with this; and your lordship may please to observe, that immediately after those words 'plenius veritatem' there is a comma, and none before; the whole sentence before is entire, and therefore in construction these words, 'plenius veritatem,' refer to the words 'ad inquirendum,' at the beginning of the sentence; and the sense is plain, that the commissioners are to enquire by the oaths of good and lawful men of the country, and by other ways and means, &c. 'plenius veritatem, de quibuscunque proditionibus, misprisionibus,' &c. and then the commission goes on, and there comes after the comma, 'et ad easdem proditiores et alia præmissa hac vice audiend' et terminand' secund' leges,' &c. In our legal proceedings in Latin, we are not so nice as to confine ourselves to the Latin of the classics; but this is very proper Latin, and the disjoining of the words 'plenius veritatem' from the words 'ad inquirendum,' by which they are governed by the interposition of so many words, is no objection; for nothing is more common in the best authors, than placing the most material words at the close of a very long sentence, which in point of construction must refer to others at the beginning. And therefore I hope we shall hear no more of this objection.

As to the Christopherus being with an *e* instead of an *o*, that is not a proper objection at this time. No man will pretend to say, he may not be christened by that name, as Henry is the usual name, Harry is the common nickname for Henry, yet a person may be christened Harry, and so have many persons been.

But, my lord, we say this is a word used in all the law proceedings for Christopher, and spelt in this very manner with an *e*.

As to the other objection; as to the alteration of the tense in the words 'compassavit, imaginatus fuit, et intendebat:' the objection is made as if we were tied down to those exact forms of grammar; if the sense is plain, if the facts are explained by proper Latin words, it is enough for us, whether they are carried on sometimes in one tense, and sometimes in another, provided they sufficiently charge the fact to be done.

The last objection is the word 'seisiend', that it is not a word known in the law; if that would hold, it would not quash the indictment, because there are several other words to the same effect, which sufficiently express this villainous overt act, without this word 'seisiend.'; for

it is said, that the prisoner did propose, consult, and agree, 'ad sacram personam dicti Domini 'Georgii nunc Regis, &c. capiend', seisiend', 'imprisonand', et in custod' detinend." But we insist that this is a very proper word. In the court of exchequer the words used in cases of seizure is 'seisivit.' Writs issue commanding the sheriff 'seisire', such lands, &c. into the king's hands, and the sheriff returns 'sei-'siri feci:' so that if this word was looked upon as an unknown and unintelligible word, what must become of many judgments and proceedings in that court? It is a law word that is here applied to the person of our sovereign, and as it is in the proceedings before-mentioned applied to seizing lands, &c. why may it not be applied to the seizing of a person? And then if 'seisire' be proper, the gerund from that must be 'seisiendum,' and therefore we apprehend, my lord, that this is a plain answer, and that there is no colour of reason for this objection.

Sol. Gen. My lord, as I apprehend these exceptions have no real foundation, nor scarce any colour in themselves, so I do not know whether it would not be giving too much credit to them, for so many of the king's counsel as attend your lordship on this occasion, to spend the time of the Court in giving answers to them. The true answers, and all the answers which can be given, have been already offered and very fully enforced; and therefore I shall not trouble your lordship with any thing further.

Mr. *Hungerford.* My lord, I beg a few words by way of reply. As to the first objection we hope it is not answered: we object against the words 'plenius veritat,' as words of no sense or meaning, as ranged or placed in this indictment. Mr. Attorney hath endeavoured to make them sense by transposing them, and inserting 'plenius veritat' ten lines before what the indictment hath. We must take the words as they are in the indictment: and if they are not grammar, or intelligible there, the objection still holds. I know not what liberty the king's counsel hath to transpose the words. I know school boys sometimes pick up words without regard to grammar, to make what they call nonsense-verses; but I never knew an attempt before by transposing of words, to make nonsense grammar, prose, or poetry. There is one thing that hath been mentioned, that the judges have settled the forms of proceedings in cases of high-treason by direction of the House of Lords, and this 'plenius veritat.' is got into the form inserted in that treatise: that book, my lord, notwithstanding the solemn allowance of it by the judges, is not, with submission, a conclusive authority: It was denied to be so in the case, of Matthews, which case I can the better speak to, because I was of counsel in it. The objection taken in the Case of Matthews was to the pannel of the jury, for that the addition and places of abode of the jurymen were not inserted in the pannel, according to the directions of that book, the better to guide the prisoner in his challenges. My lord chief justice King, who presided at that trial, assisted by all the then judges of England, (except your lordship, who was absent) over-ruled that exception; and I think the rest of my lords the judges, now present, concurred in that resolution. Wherefore, if we have no authority to combat with, but the authority of that book, which hath been solemnly denied to be a good authority, we hope this objection shall stand.

My lord, as to the word Christophorus, without doubt the etymology of the word is as Mr. Ketelbey hath opened; and there is this further to justify that way of spelling which we contend for, even the two first syllables of the word in the indictment are 'Christo,' as the Greek with an *o*, and not 'Christu'; and in conformity with the Greek spelling in the two first syllables of the word, we hope the next syllable must be spelt so too: but since it is contended, that the substance of this objection must be put into a plea in abatement, we shall wait the direction of the Court as to that matter. As to the words 'compassavit, imaginatus fuit, 'et intendebat,' there is something in that objection; they all relate to a time past, but they are in different tenses or time; there is the preterperfect and preterimperfect tense, and there is the conjunction copulative between them, as if both tenses implied the same times, which it is certain they do not, and therefore they charge naught; for a thing cannot be done lately and formerly, and both at the same time.

As to the other words 'ad capiend', seisiend' 'et imprisonand.', we are upon the forms of an indictment, and must be governed by the usual forms: I believe there is no instance on record, where these words are made use of in any acquisition of this kind; for which reasons we humbly hope this indictment shall be quashed.

Mr. *Ketelbey.* My lord, I beg leave to offer a word or two by way of reply: Mr. Serjeant Pengelly is pleased to say, that sense may be made of these words, and that 'ple-'nius veritatem' as it is, is good Latin, by lifting these words from the bottom of the sentence, to the top, and making them follow 'ad 'inquirendum'. I believe four parts in five of the caption interfere between the 'inqui-'rendum' and the 'plenius veritatem,' a whole catalogue of offences, several independent sentences, different times, persons, places, things all stationed between, and yet these words are to be united: I would be glad to know by what rule of grammar this can be done?

As to the word Christopherus, I shall not further insist upon that as a proper objection under this head, because your lordship seems to be of an opinion that we ought to have pleaded it in abatement.

As to the word 'seisiend.', it hath been said it is a word well known in the exchequer, but

they do not shew one instance where-ever it was used; indeed they mention a precept to the sheriff 'seisiri facias,' and the return 'seisiri 'feci,' but what is that to 'seisiendum;' the one is justified by usage, the 'seisitus' as 'seisiri;' besides 'seisiri' is there used in the very same sense which the law hath imposed upon it; it is to be put into possession, the lands are so delivered by the sheriff into the hands of the king, that he becomes seized thereof, 'ut de feodo et in jure coronæ,' till an 'amoveas manus' be obtained: but if ever that word was put into any indictment to signify to seize and imprison the king, it is entirely unknown to me.

Indeed here is one piece of doctrine offered, that if it holds good puts an end to all our objections, and even to the act of parliament on which they are founded; but I must own it is entirely new to me: we are told there are other words in the indictment, and other overt-acts, and if one act is sufficiently expressed by any one word, though there be words that are improper and false Latin, yet it shall not vitiate the indictment; what avails then this act that empowers us to make objections to mis-writing, mis-spelling, false and improper Latin? It is impossible to suppose, that whoever hath the drawing of an indictment should make faults, and blunder on from first to last: no, in an indictment for high-treason the greatest care is, or ought to be taken in the drawing of it; and where the life of a person, and all that is valuable is at stake, the law will not subject any one to such dreadful penalties and forfeiture for an offence expressed only by words of an unknown or dubious signification; and therefore, we hope that this goes to the whole, and that the indictment shall be quashed, or else it would be nugatory for us to be allowed to take exceptions to one part of the indictment, if the other were good.

I believe Mr. Attorney won't shew any instance (I submit it to his greater experience), where he ever knew one overt-act in an indictment set aside, and the rest of the indictment held good: exceptions have, ever since the making this act, been taken and argued by counsel, and determined; but if this be a sufficient answer, surely they spent the time of the Court to very little purpose, in debating whether there were any faults in the indictment, when it was so easy to shew it was not faulty throughout. Mr. Serjeant Pengelly has been pleased to mention the opinion of my lord chief justice Holt, upon one of the trials before him, that although one entire overt-act was insufficiently alleged, yet if there was any other well laid, the Court would not quash the indictment;* I wish he had told us in what trial, or where it is to be found, for I don't remember it in any of the printed trials: as to what was mentioned, with regard to the authority of that book, for the words 'plenius veritatem,' Mr. Hungerford rightly observed, that the authority of that book was utterly denied at the trial of Matthews; your lordship was not there, my lord chief justice King presided then upon the bench, that book particularly directed, that not only the names of the jurors should be inserted in the pannel, but also their additions, and the places where they lived; instead of that, the copy of the pannel delivered consisted only of a long list of bare names, no additions, nor where they lived; whereupon we made our objection, and insisted on the authority of that book. Notwithstanding which, the objection was then over-ruled, and consequently we hope we shall not be pinned down to the authority of this book any more in this case, than the other; for these reasons we hope your lordship will be of opinion that the king's counsel have not given a full answer to our objections, and that the indictments shall be quashed.

Mr. *Hungerford.* My lord, I beg leave to hand up this precedent of my lord Coke's, where these words are entirely left out.

L. C. J. What is the use you would make of setting up an extrajudicial opinion of my lord Coke's, as you call it, against the opinion of all the judges? Because it is not in my lord Coke's form, therefore it is not necessary or right; but at the same time you would have us governed by my lord Coke's opinion, you would have us reject the opinion of all the judges. My lord Coke may be wrong; the opinion of all the judges in an extrajudicial case may be wrong: but it would be very strange to give a greater weight to the extrajudicial opinion of my lord Coke, because he hath left the words out, than to the opinion of all the judges that have put the words in; neither is conclusive; but certainly the opinion of all the judges of later times, must have more weight than the extrajudicial opinion of a single judge at any former time.

As to the matter of this objection, you say that in the recital of the commission of Oyer and Terminer, in the caption of the indictment, it is said the commissioners had authority to enquire 'de quibuscunq; proditionibus, &c. 'plenius veritatem;' 'plenius veritatem' comes in afterwards: we have been told of classical and Ciceronian Latin; and if there be any regard to be had to that, is any thing more common in every part of Cicero, than to put words last, that in construction must come first? I do not know any rule that is laid down when the words coming last, are in construction to be taken first, but only this, that the construction is to be according to the natural sense and import of the words; and if so, then in the authority of the commissioners, where it is said they were to enquire 'de quibuscunq; proditionibus, &c. plenius veritatem,' in construction the last words must be taken first. You say as they stand it is nonsense, and signifies nothing, and the words are nugatory; it

* See Leach's Hawk. Pl. Cr. book 2, c. 46, § 189.

is not material where they stand, they must be taken in that manner of construction as would make them significant, that is, by taking the last words, 'plenius veritatem,' to go first in construction; then it is very proper and just, and all will be well.

As to the matter of the misnomer, that you have given up, and very justly, for you are proper to plead that in abatement.*

The next objection is, you say here is improper Latin, 'compassavit' in the preterperfect tense, 'imaginatus fuit' in the same tense, and 'intendebat' in the preterimperfect tense; take these words by themselves, suppose it had been 'compassavit' only, 'imaginatus fuit' only, or 'intendebat' only, would not either of these words, whether in the preterperfect or preterimperfect tense, have been sufficient to have charged Mr. Layer with having some time before compassed and imagined the death of the king? Every one of these words charge him with the intent of compassing and imagining, and that relates to a time that is passed, whether preterperfect tense, or preterimperfect, that is not material: then as to one of the overt-acts, as here be a great many to which no objection is made, the high-treason is compassing and imagining the death of the king; the overt-acts are several, either is sufficient to maintain the treason of compassing and imagining the death of the king. One of the overt-acts is, that he did design, consult, and agree 'ad capiend, seisiend', et imprisonand.', the person of the king. Suppose it had been 'ad capiend.' et imprisonand.', then you say it had been well enough; but the putting in this word 'seisiend.', will vitiate the whole, because it is an improper and vicious word. I don't know that, nor dare not say in a court of law that it is an improper and vicious word: you are told of a court of law where the word is used, and hath the same signification as in the indictment; as to seize lands into the hands of the king, to seize lands, or to seize the king's person, the word is the same, and if 'seisire' is good, and enough to signify to seize lands, 'seisire' is enough to signify to seize the king's person; therefore I think it is a proper word; but whether it is or not, there is sufficient in the indictment to maintain the charge against Mr. Layer, for he is charged with a consultation and agreement to take the king, with a consultation and agreement to imprison and detain the king in prison: these are sufficient without the word 'seisiend.', but the word 'seisiend.' hath been a law-word, and used in our proceedings at law, never objected to; but if we say it would not signify a seising, we must set aside half the proceedings in the Court of Exchequer. These are all the objections you have made, and in my apprehension they can be of no use or service to your client, they signify nothing.

Just. *Powys.* I am of the same opinion: not the least doubt remains with me.

Just. *Eyre.* I think the caption of the indictment is in common form, and the exceptions to the indictment itself are fully answered.

Just. *Fortescue Aland.* I am of the same opinion; and think the objections to be of no weight.

L. C. J. The objections being all over-ruled: demand of him what he hath to plead.

Cl. of the Cr. Christopher Layer, hold up your hand. How say you, Christopher Layer, are you Guilty of the high-treason whereof you stand indicted, or Not Guilty?

Prisoner. I desire my plea of misnomer may be received. And I plead Not Guilty as to the fact.

Cl. of the Cr. reads the plea.

"Et Christophorus Layer ad Barram hic duct. in propria persona sua venit, et habito auditu Indictament. prædict. dicit quod ipse est persona in Indictament. prædict. mentionat. et intens. per nomen Christopheri Layer, nuper de paroch. Sti. Andræi Holborne in Com. Mid. Ar. et versus quem Indictament. prædict. prolat. existit pro alt. Proditione prædict. et dicit quod ipse ad Indictament. illud respondere compelli non debet, quia dic. quod ipse diu ante tempus caption. Indictament. prædict. necnon ante tempus offensi in Indictament. ill. specificat. et fieri supposit. Baptizatus fuit per nomen Christophori, et per id nomen Christophori semper a tempore Baptization. sum hujusque vocat. nuncupat. et cognit. fuit, et hoc. parat. est verificare; unde ex quo ipse non nominatur in Indictament. prædict. per nomen Christophori, petit judicium de Indictament. illo, et si ipse ad Indictament. prædict. ulterius respondere compelli debeat, &c. et quoad prodition. in Indictament. prædict. mentionat. ipse prædict. Christophorus Layer dicit quod ipse in nullo est inde culpabilis, et inde de bono et malo ponit se super Patriam, &c.*

"J. Hungerford.
"Abel Ketelbey."

L. C. J. Your plea is received. He hath pleaded in abatement first, and then pleads over to the treason. What say you to it?

Serj. *Pengelly.* It cannot be expected that we should have a replication ready to their plea in abatement: we were not aware of this; therefore we ought to have time to draw up a replication.

L. C. J. What say you to it?

Mr. *Hungerford* and Mr. *Ketelbey.* My lord, we have no objection to it.

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[a] See Leach's Hawkins's Pleas of the Crown book 2, c. 25, § 68.

* "The right way seems to be, that *ph* should be followed with an *o*, and *f* with an *e*, the first being derived from the Greek, and the other from the Latin. See Lowick's indictment, vol. xiii, p. 275, where it is Christophorus Knightley. See also Co. Entr. 51, a. 55, b. 215, c. 309, c. d. 310, a. b. 319, a. 321, b." *Former Edition.*

L. C. J. Well, the plea is recorded. Consider now the question on this plea, is, whether he was baptized by the name of Christophorus or Christopherus?

Serj. *Pengelly.* My lord, to-morrow and next day being holidays (else we should have been ready by to-morrow) we therefore pray, that he may be brought up again on Saturday by rule of this court.

Mr. *Hungerford.* I have some doubt whether it can be by rule, or by Habeas Corpus.

L. C. J. When once a Habeas Corpus hath been granted, and he is brought before us, we can order him to be brought again by rule. He must be taken back again, and brought up here on Saturday next.

November 3, 1722.

The prisoner was this day brought to the King's-bench-bar by the lieutenant of the Tower, in obedience to the rule of Court made the 31st of October.

Att. Gen. My lord, I have demurred to the prisoner's plea in abatement, and pray the demurrer may be read.

Cl. of the Cr. reads the demurrer.

"Et Robertus Raymond Mil. Attorn. Dom. Regis Generalis qui pro eodem Dom. Rege in hac parte sequitur habito audit. placiti præd. in cessation. Indictament. præd. superius placitat. pro eodem Dom. Rege dicit quod idem placit. materiaque in eodem content. minus sufficien. in lege exist. ad ipsum Christopherum a respondend. ad Indictament. ill. excusand. ad quod quidem placit. idem Attorn. General. necesse non habet, nec per legem terræ tenetur aliquo modo respondere. Et hoc idem Attorn. General. pro eodem Dom. Rege parat. est verificare prout Cur' &c. Unde pro insufficient. placit. ill. idem, Attorn. Dom. Regis General. pro eodem Dom. Rege petit judic. et quod indictament. prædict. bon. et sufficiens adjudicetur, &c. ROB. RAYMOND."

Att. Gen. We pray they may join in the demurrer immediately.

Mr. *Hungerford.* My lord, it is altogether a surprise to us, and as the clerk hath read it, it is impossible for us to take the substance of this demurrer. We therefore hope we shall be allowed a few days to consider of this matter of joining in demurrer. We shall not ask many. The precedents are so, the prisoner was always indulged with some time in a case of this nature. Before the act of parliament for regulating of trials, where matters of law were started, or any special pleading did arise, the prisoner was indulged with a great number of counsel. Fitzharris had five, a greater number than I ever knew engaged on one side in deliberations of this kind, unless it were that number of learned counsel which met to advise upon, and adjust this demurrer. But I think in the ordinary course of the Court we are proper to desire two or three days. Two or three days is but a little time, especially when the life of a man is concerned. Mr. Attorney took from Wednesday to Saturday to consider of our plea, we hope at least the same time shall be allowed to us to consider of this demurrer. I have in my hand the arraignment of, and proceedings against Fitzharris, he was indulged several days.

Mr. *Ketelbey.* My lord, I have brought the book along with me relating to Fitzharris: As to the matter of having time to join in demurrer, whether we are not entitled to it by the rules of the Court, I must submit to your lordship. It is a case of great consequence; and, as I take it, the constant practice is, that a four days rule is always given to join in demurrer. This is always done, as I am informed, on the crown-side as well as the plea-side. The tenor of the rule is either to join in demurrer within four days, or to wave the plea; but Mr. Attorney requires to do it immediately. In Fitzharris's case the attorney-general demurred in court, and the counsel on the other side refused to join in demurrer immediately, and they had from Wednesday to Saturday. We hope therefore there shall be a four days rule for us to join in demurrer as in all other cases. If we are not regular in insisting upon four days, we hope at least your lordship will indulge us with some time; or if we do immediately join in demurrer, that we shall have some time to prepare ourselves to argue it.

L. C. J. How say you, Mr. Harcourt? how is the course of the Court?

Mr. *Harcourt.* My lord, in criminal prosecutions for misdemeanors, two four day rules to plead are given, and a peremptory rule moved for; and then if there be a demurrer, one four days rule to join in demurrer is given, and a peremptory rule moved for: But in capital cases there is no rule given, either to plead or join in demurrer; all proceedings in such cases being at bar, the prisoner is obliged on all occasions to answer immediately, nor can there be any instance shewn to the contrary.*

L. C. J. The course of the Court is against you.

Mr. *Hungerford.* As to the course of the Court, I know no better description of it, than that it is the uninterrupted usage of the Court warranted by reason, or at least not contradicted by it. The officer tells you that in criminal cases which are not capital there are rules for four days, and four days to plead, and likewise a four days rule to join in demurrer; and surely if in a criminal case, which is not capital, a man is indulged four days; surely in a criminal case as this is, which is capital, and doth touch a man's life, his posterity, and his estate, by parity of reason, the indulgence ought to be more than four days. I beg leave to observe one thing in the case of Fitzharris now in my hand. My lord chief justice then asks the prisoner, will you plead over? If you

* As to this see the Case of the honourable Robert Johnson, 6 East's Rep. 583.

will, you may have any time in reason. Now, my lord, we have pleaded over, we have pleaded Not Guilty as to the offence; so that for that reason we might have till Hilary term next, because we have forwarded them in their journey already by pleading Not Guilty as to the high-treason. And we hope, therefore, the gentlemen of the other side will not contend with us for two or three days in a case of this nature.

Mr. Ketelbey. My lord, I only beg leave to mention this single word, that we do not insist upon this for delay, or to put off the trial; we have pleaded over to the treason, and in case we should join in demurrer, whatever time is taken up in arguing it, cannot obstruct the proceedings in order to the trial; nay, the trial may be had before the matter of the demurrer be determined.

L. C. J. In case you should join in the demurrer, what can you do else?

Mr. Ketelbey. I believe we shall. If we had not thought our plea would have stood a demurrer, we had not made use of it.

Serj. Pengelly. My lord, what he prays is against the rules of the court; in all capital cases there are no rules given to plead or join in demurrer, but the proceedings are all 'instanter,' the prisoner being present in person, and therefore, my lord, there is nothing in what they ask. When they put in a plea in abatement here at the bar, which cannot be expected or thought of, it is reasonable that there should be some time to consider of that, to see the nature of it, and consider what to answer to it. We have demurred to their plea; no doubt they had considered of their plea whether it was a good plea in law, or not; if it be not good, can they amend their plea in abatement? It was never allowed: If they can make no alteration in that, what can they do? They can do nothing else but join in demurrer; it is all they can do; and when they have joined in demurrer, we shall see if they have any reason for further time. But as to what they say, that as to the sufficiency of the plea, it may be argued another time; and as they have pleaded over to the treason, there needs be no delay as to the trial; I would be glad to see whether by this they do not deprive the crown of the election, to proceed in such manner as shall be thought most advantageous for the carrying on the prosecution; but is it advisable to leave a plea in abatement to the whole undetermined, and to try the issue first? I believe they can shew no such instance, and therefore in all capital cases, as well as in criminal, the plea in abatement goes to the whole, to destroy the whole indictment, and indeed ought to be determined before the Court goes on with the trial. My lord, we are surprized at what they mean by this, when they can do nothing else but join in demurrer, and therefore we hope they shall join immediately.

Att. Gen. My lord, what we insist upon is not a new thing; the constant practice in cases of this nature has been, that if a demurrer is put into the prisoner's plea, he must join in demurrer 'instanter.' I believe the gentlemen of the other side cannot shew one instance to the contrary. The prisoner can do nothing but join in demurrer. As to what has been said about our having time from Wednesday to Saturday, the reason was because Thursday and Friday were no Westminster-hall days, for which reason we could not have the prisoner brought up before this day. The putting in a demurrer to this plea can be no surprize to the counsel for the prisoner; for yesterday we sent copies of our demurrer to them. Mr. Pember, the prisoner's clerk in court, had a copy of it by two of the clock in the afternoon; and the prisoner himself had one about four o'clock. As to the case of Fitzharris which has been cited, it was a plea looked upon to contain things of very great difficulty; the time asked for there was not to join in demurrer, but the time applied for was for settling the plea; but as soon as Mr. Fitzharris had pleaded, and the Attorney General had demurred to it, the Court ordered the prisoner to join in demurrer 'instanter.' As to what has been said, that we may proceed to trial on the plea of not guilty before the demurrer to the plea in abatement is determined, that is by no means advisable; the consequence of that may be very mischievous; for if the Court should be of opinion that the plea in abatement is good, after we have disclosed the whole evidence against the prisoner upon the trial, though we obtained a verdict for his majesty, the whole must be set aside; and therefore we hope your lordship will not break into the common method of proceedings, but make the same rule for the prisoner, as always has been made in cases of the like nature; which is, that he shall join in demurrer immediately.

Sol. Gen. My lord, I agree with the counsel for the prisoner that we are in a case of life, and that is the reason why their client should have all the indulgence the law will allow him. But I beg leave to observe, that we are not now on a question that directly concerns the merits of the case, nor whether a prisoner who is to answer for his life at this bar, should have time to send for his witnesses, or prepare for his defence. That indeed might be of a different consideration. But we are now barely upon a frivolous, dilatory plea, as frivolous a plea as ever was offered in any case whatsoever; and the question is, whether they, who have prepared and put in this dilatory plea, shall have time given them to consider, whether they will join in demurrer upon it or not? As to the case of Fitzharris, whatever they have inferred from it, I think it rather turns against them. Was that a plea of Misnomer? A letter pretended to be mistaken in a name, which I beg leave to say, when considered, will appear to have been always so written in legal proceedings: No; it was a plea of the pendency of an impeachment for the same offence, sent up by the House of Commons to the House of Lords, and by consequence, in that case, the prere-

prative of the crown, the jurisdiction of the Lords and the privileges of the Commons were highly concerned. This was a question of as great weight, and perhaps of as great difficulty, as could come before the Court, and therefore the prisoner had time given him to plead that matter; but when the Attorney General demurred to it, the prisoner joined in demurrer instantly: And as Mr. Harcourt acquaints your lordship, the practice is, that there is no such rule for proceeding upon demurrers in capital prosecutions as in other cases; and this appears by their never being set down in the paper to be argued, as demurrers always are in other causes. So it was in the case of Fitzharris. That was argued by four or five counsel of a side, without being set down in the paper. In the case of the prisoner, which is your present consideration, more hath been done for him than was done for Fitzharris. Here is not only a demurrer given in by Mr. Attorney at the bar, but the prisoner's attorney had a copy of the demurrer at noon the day before, and consequently they could not want notice that we intended to demur, nor be under any surprize from it. What then would they take time for? Can they do any thing but join in demurrer? Can they amend in capital cases? Or could they amend a plea in abatement in any case? They know very well that they cannot. Can they withdraw their plea? I believe they cannot do that neither without the consent of Mr. Attorney General. If this be so, would they take time to consider whether they shall join in demurrer, when they have no choice, when it is impossible for them to do any thing else? But, my lord, the method of proceeding we are now insisting upon, hath been always taken in capital cases. I agree, when the question has concerned the merits of the prisoner's case, or when he has been to prepare and consider of some matter which has been, strictly speaking, his defence, time hath been allowed, but not in other instances. Where the exception taken hath been to the jurisdiction of the Court, and time has been desired to make it good, it hath been denied; as in the case of my lord Preston, who was tried before my lord chief justice Holt, and other judges at the Old Bailey. My lord Preston insisted that he was a peer created by letters patent of king James the second, and consequently that the Court at the Old Bailey had no jurisdiction to try him, and he prayed time to produce his letters patent in order to prepare and make good his plea; but the Court refused to give him time for that purpose. And I believe it will be found, that in all instances where pleas have appeared on the first view of them to be merely dilatory, and offered for no other reason but to delay that justice which ought to be done to the crown, the judges have refused to assist the prisoner with any time beyond the ordinary rules of the Court.

Mr. *Reeve.* I shall not take up your lordship's time much in this case. My lord, we think in civil actions the Court on motion would set this plea aside, but in a case of life it is received; and Mr. Attorney has thought fit to demur to it. Is any advantage lost, for the prisoner to join in demurrer instantly? I apprehend what they move for is to have time to join in demurrer. Are they not as ready to do that now, as if they had a week or ten days time given them? Is there any thing else can be done? And is there any occasion for time to do that which must be done? And cannot they as well join in demurrer now, as if they had more time to do it? Certainly they may, my lord, since by the rules of the Court (as Mr. Harcourt informs your lordship), there is no rule given, but they are to join instantly. There is no reason to allow them time, since they can lose no benefit or advantage by joining instantly. So then, as we apprehend, we are in the course of the Court, and there is no reason why the course of the Court should be altered in this case; we therefore hope that they shall join in demurrer immediately.

Mr, *West.* My lord, I think there is nothing in the exception of his counsel not being ready to argue his plea: no doubt they considered of it before they brought it in; and when they had produced their plea, Mr. Attorney demurred to it. I cannot see why they should insist so much for time, when they can do nothing else but join in demurrer; therefore we hope that they shall instantly join in demurrer.

Mr. *Hungerford.* My lord, I beg leave to set a matter of fact right, that is as to the case of Fitzharris, which was mentioned as an authority against us by Mr. Attorney, but in truth is not so; for though Fitzharris's counsel did join in demurrer immediately (or 'instanter,' as it is called) yet that was not by the coercion of the Court; but they voluntarily offered to join in demurrer, upon an opinion (as I presume) of their own great abilities and self-sufficiency in the matter. But we have not that opinion of our extempore performances, but desire time to consider of this matter. As to my lord Preston's case, quoted by Mr. Solicitor, it is true the Court did not give him leave to send for his letters patent, because, as my lord himself had opened them, and the truth was, his letters patent were dated at St. Germains, and granted by king James there, after his abdication; and it would have been the highest indignity both to the Court and the government, to have such letters patent pleaded, or insisted on; and I believe no gentlemen at the bar then, or now, would have signed such a plea, which if allowed would have implied that the government was not well settled in their majesties king William and queen Mary, and that king James (though at St. Germains) had a right to create peers, and consequently was really king. But if my lord Preston had had letters patent regularly granted by king James or king William, in his chambers, can any one say they would not have given him leave to send for them? Most certainly they would; but it appeared they were dated at St.

Germains, and granted to him there; that, with humble submission, was the reason why they would not indulge him with time, and that precedent, therefore, I hope, is of no weight in this case. It is said we are tied down by our plea; we knew our own strength when we pleaded it, and therefore ought to be ready to argue it: but if my memory doth not fail me (and therefore I speak it with some doubt), I believe there are instances where even in a criminal case a plea hath been amended. I believe it was so done in the case of my lord Banbury, which was a plea to the jurisdiction of the Court. My lord, we shall desire but a very little time, which I hope will be granted us.

Mr. Ketelbey. My lord, as to Fitzharris's case, the plea was amended there: the first time it was brought in by Mr. Fitzharris himself to the bar, the plea was brought in and read in court; after the plea was read the Court assigned him counsel, and gave him from Saturday to Wednesday to put the plea in a regular and legal method; and it was altered and brought in again on Wednesday. As to what the Attorney says, that the Court compelled him to join in demurrer instantly, the words of the book which I have in my hand are; "We that are assigned counsel for the gentleman at the bar, we do not design to delay the proceedings, but to declare that we will join in demurrer with them immediately." These are the words of the book; so that it was the voluntary act of the counsel, and they were not at all compelled to it by the Court. As to what Mr. Harcourt observes to be the course of the Court, and that we cannot shew one instance to the contrary; I do not know whether they can shew one instance for it, except in the case of Fitzharris; if they can shew in any capital case one instance, we shall submit.

It is called a frivolous plea, the variation of one letter, and never writ otherwise. Whether it is frivolous or not will appear when it comes before your lordship in judgment: as to its never being wrote otherwise than with an *e*, I do not believe they can find it in any book either great or small spelt so, unless they have met with it in 'Instructor Clericalis:' all the books of authority are otherwise; I believe that one carries with it but little weight. As to my lord Preston's case, which Mr. Solicitor is pleased to cite against us, that the Court would not allow him time to make out his plea, Mr. Hungerford hath given an ample answer to that, and a true one as to the circumstances; but if the case of that lord had been such as the gentlemen of the other side are pleased to state it, what doth it prove, but the contrary to what the Court did in Fitzharris's case, and therefore the most that can be made of it is one authority against another? and where authorities are equal, we hope the indulgence of the Court will interpose in favour of life, and grant us such reasonable time as the nature of the thing requires, and not compel us instantly to join in demurrer.

Att. Gen. My lord, I beg leave to state one fact right, and that is as to Fitzharris's case: they say the plea was put in, and afterwards amended; that is a mistake; the fact was, that his wife brought a plea into court, and offered it to the Court, and pressed it might be received; but Mr. Fitzharris was advised to consider what he did, and thereupon he took it back, and afterwards brought a plea in, which was received, and after that it was never altered.

L. C. J. I dare say it is the first time that ever in a capital case, when a plea in abatement was pleaded, and the Attorney General thought fit to demur to it, that the party desired time to join in demurrer. You are not entitled to any time by the course of the Court, you cannot shew any instance to prove it: the question then is, whether you have given any reason for us to indulge you with time, that never was granted in a case of this nature.

You have pleaded in abatement; you were enabled so to do by having a copy of the indictment; you brought your plea ready engrossed, and put it in. Mr. Attorney not being aware of any such plea, it could not be expected he should be ready with a demurrer in his hand to this plea, and therefore he desired time to consider of it. The next day it could not be, nor the next after that, they being holidays; but then the very first time that he had an opportunity to come, he comes and demurs to your plea: but you desire time, and why should you not have time, when they had time, to consider whether you shall join in demurrer?

Do you want time to consider whether you shall join in demurrer, after you had time to plead and draw up your plea, and have brought it into court? Why should you have time? Can you do any thing else but join in demurrer? You can do nothing else: and unless you can shew any reason why the Court should indulge you, if you do not think fit to join, we must give judgment against your plea. You tell us of the case of Fitzharris; that is as widely different from this case as any thing can be. It was a case of great difficulty, that required great consideration, when a party comes and informs this Court, and insists he is not within the jurisdiction of the Court. When a matter is urged to us as a question of law, if we were not bound as we are by act of parliament, we would certainly assign counsel to the prisoner to plead a matter of that nature; and when the Court in Fitzharris's case had assigned him counsel, were those counsel to argue immediately? It was nothing but justice to give them time after they were assigned, to argue a plea of that nature; a plea in which the prerogative of the crown, the jurisdiction of the House of Lords, and the rights of the Commons were concerned. The Court would not run hastily into the determining of that matter, without hearing it debated by counsel, and therefore they gave the counsel time, upon which they might be able to give a just judgment. Is there any thing in this case like it?

You have pleaded in abatement. Mr. Attorney hath demurred to your plea, and you desire we would give you time to do that which you must do, or do nothing at all. Is there any pretence? Could you in this case come, with any colour or pretence of justice, and desire of us to amend your plea? Is there any thing else you can do? This is nothing but a pure dilatory plea, and he puts in this plea. The question is, whether it should be an *o* instead of an *e*? You are not entitled to any thing of this nature, it is nothing but an affected delay; and it cannot be thought to be for any other reason; therefore you must join in demurrer immediately: if not, we must give judgment against your plea.

Just. *Powys.* My Lord Chief Justice hath given so full and clear an account of the matter, that I am satisfied, and do think you must instantly join in demurrer.

Just. *Eyre.* I am of the same opinion. In capital cases the party is obliged to plead 'instanter;' for the proceedings are carried on at the bar without giving rules: this is the constant course; and the course and practice must be the same, in regard to the time for joining in demurrer: but the Court is still at liberty to allow further time, if it be necessary to the justice of the cause; and if it could be of any use to the prisoner in the next step he is to make, I should not be against it: but as the case now stands, that he has nothing to deliberate upon, that he can lay no new matter before the Court, but is obliged to abide by his plea, and can neither withdraw nor amend it without consent, but must necessarily join in demurrer, and has no other choice; I think it would be a manifest delay of justice to allow further time; and am therefore of opinion, that he ought to join in demurrer immediately.

Just. *Fortescue Aland.* I am of the same opinion. The prisoner can have no benefit by our giving him time to join in demurrer, except it be to put off the trial: the Court makes a difference in all cases, both civil and criminal, between dilatory pleas and other pleas. An affected delay is never to be suffered, more especially in a capital case; and here it is plain, that when the counsel for the prisoner brought in this plea, that they had considered it before, and thought it of service to the prisoner, and nothing more remains than now to join in demurrer. The Attorney General, by his demurrer, says it is not a good plea; and the prisoner has nothing further to say, but that it is a good plea; and if he does not think fit to say that, we must give judgment against him. I remember in the case of the King and Gordon, when the prisoner came to the bar, having lapsed the time of taking exceptions, in order to quash the indictment, he moved the Court for time to plead in abatement; but the Court refused it, alleging they would give no opportunity for a dilatory plea: and I think there is the same reason, if not stronger, in this case, where the prisoner hath nothing to do but to join in demurrer; that is to say, to submit to the judgment of the Court, whether this be a good plea or not; and that may be done immediately, as well as if the prisoner had never so much time for it.

Prisoner. My lord, I know not how inconsistent this rule of Court may be, that in a capital case of the highest nature whatsoever, that I should not be allowed time to join in demurrer, when in criminal cases of an inferior nature there is a four days rule given. The counsel for the king were indulged from Wednesday to Saturday: I hope I shall have the same indulgence on my part, to consider whether I shall join in demurrer or not.

I am so far from desiring to give any delay, though I am satisfied how maliciously this prosecution is carried on, and am pretty well acquainted with every step taken in the management in Essex; and I am willing, rather than to continue to be thus hunted up and down the world, to retract my plea, and plead generally Not Guilty.

L. C. J. If Mr. Attorney consents to it.

Prisoner. I am obliged to my counsel for the care they have taken of me, and have here in my hand a joinder in demurrer engrossed and signed by them, and ready to deliver in; but I will not offer it, because I will not give any delay to the justice of the Court.

Mr. *Hungerford.* He stands upon his plea of Not Guilty to the indictment.

L. C. J. You have pleaded Not Guilty; you have likewise pleaded a misnomer, which hath been demurred to: Your plea therefore now must be pleaded in chief, and as put in at the time when it was first pleaded; you do not desire you may plead the same matter again this day?

Mr. *Hungerford* and Mr. *Ketelbey.* We do not.

Att. Gen. If I understand the prisoner right, he pretends to be desirous that his trial may come on, and therefore he is willing to withdraw his plea in abatement, and abide by his plea of Not Guilty: It is what we desire likewise; and I wish we could go on in this case as we ought, in a decent manner, without having groundless reflections continually made. Something hath been said of the maliciousness of this prosecution, and indirect management by somebody, it is not said whom, in the county of Essex. My lord, I defy any man to shew any single step, taken in carrying on this cause, but what is perfectly right and justifiable.

I wish, out of charity, that the prisoner would consider the circumstances he is in; if he did, he would not say this prosecution is carried on by malice; for if I know any thing of evidence, I have no reason to doubt, but at the proper time there will enough appear against him to convict him.

Mr. *Hungerford.* I dare say the prisoner did not entertain a thought of reflecting upon any of the profession concerned in carrying on this prosecution. But, pray, my lord, give me leave humbly to represent that the man's case is hard; he tells you he is in chains, and I see he is in great pain even now; and I earnestly wish that he were eased in that matter. I do

not pronounce these words out of any affectation of popularity, or to captivate the auditory, as was insinuated in the beginning of this proceeding, but in mere compassion I have to the prisoner, and to all mankind, which temper I have shewn through all the stages of my life.

L. C. J. You have been told by the Court already our opinion, that it is not in our power. We were told, and I perceive it is not denied, that he did once escape after he was taken; and if so, for the better securing him he was put in chains: Do you ask us to take those chains off? Can we do it? or should we do it? if he should escape out of the Tower, shall we not be guilty of that escape? The circumstances of the case ought and must govern. He says he is innocent, and I hope he is; and if he be, he takes the properest measures to knock his chains off, let him make his innocence appear; and it will appear whether he is innocent or not, when we come to try the cause.

Prisoner. If I thought it was contrary to law to take off these chains, I should not mention it. I desire to observe that these chains were not put on till after a fourth or fifth examination. —As to the escape out of the messenger's hands, he never shewed his warrant, and I did not know any authority he had to keep me. As to escaping out of the Tower, it is not in my power, neither is it my inclination. I desire therefore to be eased of these chains.—And another thing I desire is, that I might have an opportunity to see my relations, my wife, that she might come to me.

Mr. *Ketelbey.* That was granted in Fitzharris's case.

L. C. J. As to the taking off the chains you have had the opinion of the Court, we cannot, we ought not to do it, it is a breach of our duty; as to the other matter; he desires to see his relations, what do you say to it?

Att. Gen. My lord, as to Fitzharris's case, there was a great deal of caution used as to the persons permitted to see the prisoner; before they went in they were to be searched, and they were to be with him only in the presence of the keeper.

Mr. *Ketelbey.* It is mentioned there, that the wife had misbehaved herself, and that a particular caution ought to be taken with respect to her; but the access of a wife to her husband under such unfortunate circumstances was never denied, I believe, in any case whatsoever.

L. C. J. Upon a proper application to the Court, the Court hath sometimes ordered that persons named in their rule may have access to the prisoner in the presence of the jailor, and not otherwise, and that they should be searched before they come in. If you think fit to desire it on those terms, the Court will consider of it.

Prisoner. My lord, I must desire upon those terms as the Court thinks fit, and that my sister may have liberty to come with my wife.

L. C. J. Your wife and sister: It may be reasonable for them to have access to you, but they are not to be with you but in the presence of the gaoler.*

Serj. *Pengelly.* My lord, I beg leave to observe whether it is usual for the Court to make such rule: On the trial of sir John Freind, there it was only intimated by my lord chief justice Holt, but the Court did not order it by making any rule; they know they may apply properly, and there may be directions given to the lieutenant of the Tower: As to the counsel, that is allowed in the act of parliament? and as the Court hath a power to assign counsel, it is proper for the Court to give directions for them to be admitted at all seasons, and at all times.

L. C. J. Why the wife and the sister?

Prisoner. Yes, my lord, my wife and sister. I do not put in a number of relations.

L. C. J. I do think, brother Pengelly, that the Court are trusted in a matter of this nature, and may regularly give directions with what proper cautions they think fit. Why, he says he is denied the comfort of his wife; he desires that his wife and sister may be admitted to come to him. You say it hath been sometimes intimated, but not ordered; if it was intimated by us, and not complied with, I believe I should make no difficulty to order it, provided it be with a reasonable caution, and no inconvenience in it. Whether is it the wife or sister you desire? I think one is enough, and she must submit to be searched.†

Serj. *Pengelly.* Before your lordship makes any rule in this case for the prisoner, I beg that he may be obliged to amend his plea of Not Guilty, and that he may plead by the name of Christopherus, by which he is indicted. You have been brought to the bar, and have put in a plea by the name of Christophorus; if you are in earnest, that you desire to wave your plea in abatement and have it withdrawn, you must change the name wrote in the commencement of the plea, and make it as it is in the indictment, that there may be no embarrassment in the proceedings at the end.

L. C. J. You consent to have it amended?

Mr. *Hungerford.* The prisoner at the bar hath consented to withdraw his plea in abatement; and though the plea were such that he might have prevailed upon it, yet after his pleading Not Guilty in general, there is not, in the course of this proceeding, any period of time wherein he can avail himself with the matter of this plea in abatement; and therefore we submit it to the Court, and to the king's counsel themselves, to put this matter into such a form, that the prisoner may come to a fair trial upon the issue of Guilty or Not Guilty.

Mr. *Ketelbey.* I believe the prisoner is willing to come into the method offered; and though this plea hath been called a frivolous plea, yet the precaution taken by the gentle-

* See Hampden's Trial, vol. 9, p. 1054; and Rookwood, vol. 13, p. 139.

† See the Proceedings against Fitzharris, vol. 8, p. 223.

men of the other side seems to give a sanction to it, and makes it not so frivolous as hath been represented.

L. C. J. What do you mean, Mr. Ketelbey? Here is nothing asked of you: you do desire to wave and withdraw your plea; we desire to know, if you do, whether you will plead by the name as it is in the indictment?

Mr. *Ketelbey.* My lord, we do.

Att. Gen. We desire the plea of Not Guilty may be amended, upon the consent of the prisoner.

Mr. *Hungerford.* We offer now, let the piece of parchment be entirely abolished, take it entirely out of the way, and we plead Not Guilty.

L. C. J. Your plea must be now 'et prædict' Christopherus ductus hic ad barram,' &c.

Mr. *Ketelbey.* We submit it.

Prisoner. I desire to withdraw and retract the other plea, and do plead Not Guilty.

L. C. J. No, it must be mended; you will hear how it is when it is struck out and amended, and then you will tell us whether it is mended acording to your intent, or no.

Cl. of the Cr. "Et prædictus Christopherus Layer allocutus existens per Cur' hic de alt' prodition' prædicta per Indictament' prædict' ei superius imposit' qualiter se velit inde acquietari, idem Christopherus Layer dicit quod ipse in nullo est inde culpabilis et inde de bono et malo ponit se super patriam."

L. C. J. Is this according to your intention?

Prisoner. Yes.

Serj. *Pengelly.* My lord, I believe it is usual in these cases for the Court to appoint a time for the trial; the last return but one in this term is the 19th of November, so if you please it may be the 'quarto die post,' which I think is Wednesday, if that be suitable and convenient to the Court.

L. C. J. What say you to it?

Prisoner. I desire your lordship would give me a longer day to prepare for my trial. I have a great number of witnesses, twenty or more, most of them people of the first quality. I hope I shall have the common processes of the Court to bring them here; and, my lord, another thing I desire is, that I may have a Habeas Corpus ad testificand', to bring my lord North and Grey, and my lord Orrery at my trial. That, my lord, you would please to give me as long a day as you can to prepare for my trial; if your lordship please it may be Monday the 26th, and then your lordship will have a day of rest between.

L. C. J. That will be out of the return.

Mr. *Hungerford.* They must appear, and then may be adjourned.

L. C. J. It cannot be adjourned over beyond the return.

Mr. *Ketelbey.* My lord, the prisoner hath shewn that he hath in no respect affected delay.

L. C. J. It cannot be. God forbid that we should deny the prisoner to have a reasonable time to prepare for his defence; it is three weeks from hence; you have been aware of it long before; you have known the indictment was found; you have had a copy of it; you have known your charge; and is not all this time enough? Consider, the term draws toward an end, and it interferes with the common business of the term if we carry it to a further day: we do agree the Venire to be returned Octab. Martini, and the trial then must be the 'quarto die post,' which will be Wednesday the 21st. And it is proper for us to give you an intimation now, not to expect any further time, or the jury to be adjourned; do but consider what a multitude must be brought up, eighty at least: the prisoner hath a privilege to challenge 35 peremptorily, and after, for cause, as many as he pleases; so that a great number must be brought up; and for them to be forced to attend here the 21st, and still the trial to be put off, it will be a great inconvenience and a great charge, therefore that must be the day; we shall not consider to put it off till any farther time.

Prisoner. I beg leave for one word more; I have a witness that is to come from Edinburgh, and I can hardly have him here by the 21st. If I could but be indulged a few days longer——

L. C. J. We cannot do it without making an error in the proceedings.

Prisoner. Is there no other return for a Venire to be returnable?

L. C. J. No; there is none but that, and the last return of the term; and it is impossible to try him that day, without doing a manifest wrong and injustice to the people of England.

Prisoner. My lord, where a man's life is at stake, if I should not be indulged over till the last day of the term, for want of a witness I may be in danger of my life: I hope therefore your lordship will please to indulge me.

L. C. J. You have had a great deal of time already, time sufficient to bring your witness from Edinburgh, or any other place, and we cannot do it. To put you off to the last day of the term, is to do a manifest wrong to the people of England.

Prisoner. The reason why I mention it over and over again, is, because I would not give your lordship the trouble to be turned over to another day, on troubling your lordship with affidavits.

L. C. J. In what you lay before us as matter proper for consideration, we shall do what is just. It is not proper for you to tell us what we have to do, and to make bargains with us. That is the day of trial; it must be on Wednesday the 21st: your counsel will tell you it is impossible to comply with your request, without doing the manifestest injustice in the world. Or else, whether to try you upon the 21st, or in two, or three, or four days after, I do not think the consequence worth disputing; but we cannot do it without doing wrong and injustice to the people of England.

Prisoner. I hope I shall be indulged two or three days.

L. C. J. We can say no more. The time

you have had for preparation for your trial we think abundantly sufficient to prepare yourself, therefore we are of opinion that the trial go on at that day; and we order it accordingly.

Mr. Ketelbey. Your lordship will please to order a rule for his wife and sister to come to him.

L. C. J. No; not for his wife and sister.

Prisoner. My lord, for a single woman to come through the courts and the guards, to be examined by herself, it is not so proper, my lord.

L. C. J. You shall have a rule from the court for your wife to come; as for your sister, we must leave that to the direction from another place. We must not be too forward in granting women to come, we remember an escape occasioned by a woman coming thither.

Att. Gen. There must be a rule to bring him up at the day of his trial.

Mr. Ketelbey. My lord, as to having his Habeas Corpus ad testificand' for my lord North and Grey, and my lord Orrery.

L. C. J. You must give notice, and then move what you please.

Mr. Hungerford. By what was said, I did understand, I must confess, that though the rule was made for the wife only, yet that it might be in the power of the gentleman jailor to permit her sister to come with her.

L. C. J. We give no direction concerning it. He will have a rule from the Court that will be his direction, unless he receives any additional direction from any other place; but the Court names his wife only.

Mr. Ketelbey. There was another thing mentioned, that he may have copies of his papers that were seized.

L. C. J. Give notice for what you think fit, and move it.

November 21, 1722.

This day Christopher Layer, esq. was brought to the bar, in custody of the lieutenant of the Tower, in pursuance of the rule of Court made for that purpose, in order to his trial.

Cl. of the Cr. You Christopher Layer, now prisoner at the bar, these men which you shall hear called, and personally appear, are to pass between our sovereign lord the king and you, upon trial of your life and death: If you will challenge them, or any of them, your time is to challenge them as they come to the book to be sworn, and before they be sworn.

Heneage Norton, esq.

Mr. Hungerford. My lord, we desire that his irons may be taken off.

L. C. J. The irons must be taken off; we will not stir till the irons are taken off.

Prisoner. I hope, my lord, that the irons shall be now taken off.

L. C. J. They shall be taken off.

Mr. Hungerford. The poor man hath been so oppressed by these chains, that he was not able to prepare his brief. I had it not till late last night; and it is ten sheets of paper.

Att. Gen. Whose fault is that? You have had time enough.

Mr. Hungerford. It is the fault of the irons, Mr. Attorney; the brief was not brought to me till eleven of the clock last night.

L. C. J. It was an omission; they should have been taken off before he came to the bar.

Att. Gen. There was direction given for their being taken off before; how they came not to be taken off, I cannot tell.

L. C. J. Are the irons taken off?

Gent. Jailor. Yes.

L. C. J. Go on.

Cl. of the Cr. Heneage Norton, esq.

L. C. J. You must call over all the Jury.

Mr. Hungerford. I thought they would be all called over once, before any one is endeavoured to be sworn.

Cl. of the Cr. They have been called over already.

Mr. Hungerford. When? Not since the Court sate, I am sure. I would know whether the intention is, that all the pannel be called over before any one of them is sworn, or that the pannel is to be called over but once, and the jurymen sworn as they then appear? What I have observed is, the clerk calls over the whole pannel first, to see how many appear; and then calls it over again, and swears them as they answer to their names, if not challenged.

L. C. J. What you observe is what hath been done at the Old Bailey; there they call them over first; and then they call them over again, and as they appear they are sworn presently. But by the course of the Court here they are called over before the Court is sitting, and they mark those that appear. That is not sufficient; but they are called over again in court, and then their appearance and non-appearance being marked, they do call those over again that did appear; and as one appears, if there is no objection to him, he must be sworn.

Mr. Hungerford. I have observed them to be called over when nobody is by, in civil cases; but in such a case as this, a case of high-treason, where peremptory challenge is allowed, it is some guide to the prisoner in making his challenges, to know before-hand who do and who do not appear.

Mr. Ketelbey. My lord, with submission, in all criminal cases, there is no other method than calling over the pannel according as it is transmitted into court. It is probable several of the jurors who did not appear at their being called over before the sitting of the Court will now appear; and therefore what we pray is, that the whole pannel may be now called over in the order as it stands, not only those who answered to the first call, but those also who then made default.

Att. Gen. I can't imagine what they mean.

L. C. J. This debate arises from not understanding one another: You have the direction of the Court; the pannel is to be called over, if any man doth not appear, his default is marked and recorded. When any one doth

appear, and he is not challenged, he is to be sworn.

Mr. *Ketelbey.* I came through the hall just now, and there is such a crowd that it is almost impossible for any one to hear when they are called.

Prisoner. My lord, I hope they shall be once called over before they come to be sworn; for as to their being called before, that was before I came; it will spend but a little time to read over forty or fifty names.

L. C. J. Call them over. I would not deny any thing that is desired in reason by or on the prisoner's behalf; consider what you are doing; the prisoner hath had a copy of the pannel, he hath examined it, and considered who are proper for him to challenge peremptorily, and he hath considered who they are that he may challenge with cause.

I cannot imagine; it was never done in this world: We have asked our officer: They ought to call over all the pannel; but if they do not appear, their default is marked; if they do appear, the prisoner knows whether he likes them or not.

Therefore, when they come to the bar, if not challenged they must be sworn.

Consider what this demand is: we shall be an hour calling them over the first time, that it may appear to the prisoner whether they appear or not; then afterwards you are to call them over again, and to have them brought up again when they come to be sworn. But if it ever hath been done, it is fit it should be done now; but our officer tells us it never was done, and why should you insist upon it now; you have had all the indulgence the law allows you.

Prisoner. I have not had a copy of the pannel above two days before. Here hath been in this cause all the vile practices—

L. C. J. You must keep within due and proper bounds. You are come now to be tried for an offence you are charged withal; but you are not to arraign and challenge every body else; you have no right to do it. If in proper time it appears you have been ill used, the Court will do you justice, and punish those that have been guilty of any misbehaviour.

Serj. *Pengelly.* My lord, if they have any objection to the jury, they are to challenge them peremptorily, when the jury come to be sworn. Then is their time; they are not to entertain the Court with speeches before.

L. C. J. No, it is not proper.—Consider how unreasonable it is for the prisoner to arraign somebody's misbehaviour without naming him. But in this method he is insinuating objections, which we cannot examine whether they are true or false, on purpose to captivate people; and, it may be, mislead them in the trial of the cause.

Mr. *Ketelbey.* As I came in, I observed that all the avenues to the Court are barricadoed up, and only a narrow place left on the stone steps, and a guard kept there to keep out whom they do not think fit to let in.

Att. Gen. I know nothing of it; and I dare say nobody will give any countenance to hindering either jury-men or witnesses coming into court, when their attendance is required here.

Mr. *Ketelbey.* I had much ado to get in myself.

L. C. J. There shall be due care taken, that any of the jury that appear, we will order way to be made for them.

Mr. *Hungerford.* My lord, I will take up but very little of your time in this matter; I find I was not understood before; that which I contend for is, that the pannel be read through once in the prisoner's presence, to see what jurymen appear, before any juryman is sworn. The prisoner hath a right to challenge thirty-five peremptorily, or without assigning any cause at all. Now, my lord, this is a favour, an indulgence granted to him by law, and he is therefore entitled to it in justice. It is of great use to the prisoner, in order to enjoy the true benefit of this indulgence that the law gives him, that he knows who doth and who doth not appear; for this reason perhaps, if he did know that such an one appears he will take him, and if he knows that such an one appears he will challenge him. And if he know that such an one, who perhaps stands low in the pannel, and of whom he has a good opinion for being an honest man, will appear, he will challenge as many as he can of the preceding persons, in order to have him, that honest man, of his jury. And as to the time the reading of the pannel will take us, (though by the way it might have been over by this time) I am sure your lordship and the Court will not regard what proportion of time you spare us, to let the prisoner enjoy the benefit of the law in this case, and to have a full enjoyment of the indulgence of the act of parliament in its full latitude, that he may know and judge (as far as the law hath enabled him,) who is to pass upon him as to his life and death. I beg therefore, my lord, that the whole pannel may be called over once before the prisoner is put to challenge.

Prisoner. My lord, what we humbly move for is what is every day done at the Old-Bailey, that they may be once called over.* All I desire is what is done there, and by the same reason ought to be done here in the same case where a man's life is concerned. I humbly move it that they may be called over.

L. C. J. We shall grudge no time to do the king and you justice. It is dangerous to make a precedent, an innovation: But if you desire it, I do not find the king's counsel object to it.

[Call over the Pannel.]

You do not expect all should be brought into court, but only to know if they do appear?

Mr. *Hungerford* and Mr. *Ketelbey.* No, no.

L. C. J. The prisoner hath a solicitor; let

* See Leach's Hawkins's Pleas of the Crown, book 2, c. 43, § 4.

somebody go down upon the steps, the solicitor be present, and then he will hear who do and who do not appear.

Mr. *Hungerford.* We humbly thank your lordship; this is a real indulgence, and w humbly thank your lordship for it.

[Cl. of the Cr. calls over the whole pannel.]

You the prisoner at the bar, these men, which, &c.

Mr. *Ketelbey.* If your lordship pleases to stay till the solicitor comes in, because he went out to observe who did appear, and who did not appear.

Cl. of the Cr. Heneage Norton. Have you ten pounds a year freehold and copyhold in the county of Essex?

Norton. I have no freehold,* only copyhold. [Then he was set aside.]

John Wilks. [Asked the same question, as were all the others who appeared, before they were either challenged or sworn.]

Prisoner. I challenge him.

Cl. of the Cr. Mark Frost.

Prisoner. I challenge him.

Cl. of the Cr. Thomas Clarke.

Prisoner. I do not challenge him.

Crier. Thomas Clarke. [Sworn.]

Cl. of the Cr. Henry Longbotham.

Prisoner. I say, I think his name is wrong spelt.

Sol. Gen. We are not now upon exceptions for mis-spelling. If his name is written as he is usually called, it is right.

Prisoner. He says his name is with an *o*, and it is written here with an *a*.†

L. C. J. Doth the copy delivered to you agree with the pannel? if it doth, as long as it hath the same sound it will do.

Prisoner. With humble submission in the case of Francia there it was allowed.

Mr. *Hungerford.* My lord, it is not the same sound, Longbotham and Longbothom, and in Francia's case the difference of a letter was allowed to be a good exception.

L. C. J. You are by law to have a copy of the pannel delivered to you; if that pannel varies from the other, it is a just exception; but if you object against a jury-man because his name is not right spelt, and that hath the same pronunciation, and he may be called sometimes one and sometimes another, it is well enough.

Mr. *Ketelbey.* My lord, as to this objection, whether the Longbotham is right, or the Longbothom, whether it is with an *a* or an *o*?

Cl. of the Cr. You mistake, it is Longbotham, and not Longbothom.

Prisoner. The last should be an *o* instead of an *a*, Longbotham?

L. C. J. Therefore we will ask the gentleman how his name is usually pronounced, whether it is not pronounced sometimes Longbothom as well as Longbotham?

Longbothom. Yes, my lord, it is.

Pris. He says he spells his name with an *o*, and here it is with an *a*.

Longbothom. I always spell my name with an *o*, but my letters are generally directed to me with an *a*.

Mr. *Hungerford.* He hath a copy of the pannel delivered him by virtue of the act of parliament; if the copy be not a true copy, it is not right according to the direction of the act.

L. C. J. Right.

Mr. *Hungerford.* Now the pannel which the prisoner hath is spelt with an *a*, and the pannel of which this is a pretended copy, is, I take it, spelt with an *o*.

Cl. of the Cr. No, they are both spelt alike.

L. C. J. You know it, gentlemen, as well as can be. Don't let us spend time where there is nothing in it; we will hear what is proper for our consideration.—Suppose a man is called and writ sometimes Longbothom, and sometimes Longbotham; and suppose he was called by either of these names, may he not therefore be called by one as well as the other? Is that an objection to say he writ with an *o*, but people write to him with an *a*? There is nothing at all in it.

Prisoner. Then I challenge him.

Cl. of the Cr. Isaac Buxton.

Prisoner. I challenge him.

Cl. of the Cr. Richard Scot.

Prisoner. I challenge him.

Cl. of the Cr. John Wormlayton.

Prisoner. I challenge him.

Cl. of the Cr. John Andrews.

Prisoner. I don't challenge him.

Att. Gen. I challenge him for the king.

Cl. of the Cr. Thomas Waterhouse, Stephen Huff, John Thorowgood, Christopher Baily. Challenged by the prisoner.

Cl. of the Cr. Isaac Potter. (Sworn.)

Cl. of the Cr. William Lord.

Prisoner. I challenge him.

Cl. of the Cr. Hezekiah Haynes. (Sworn.)

Cl. of the Cr. Thomas Heckford, jun.

Prisoner. I challenge him.

Cl. of the Cr. Richard Waglett.

Prisoner. I don't challenge him.

Att. Gen. I challenge him for the king.

Mr. *Ketelbey.* Mr. Attorney is pleased to challenge him for the king; we humbly insist on it, that Mr. Attorney is to shew his cause of challenge immediately. I own it has been otherwise in one or two late instances; but I submit it, if that practice should prevail, whether the act of parliament made on that occasion would not be in effect thereby abrogated. The act is the 33 Edw. 1, and the words of it are: "If they that sue for the king will challenge any juror, they shall assign of their challenge a cause certain, and the truth of the same shall be inquired of according to the custom of the Court." Now, my lord, I beg leave to observe, upon this

* See Leach's Hawkins's Pleas of the Crown, book 2, c. 43, § 12.

† See East's Pleas of the Crown, ch. 2, § 50.

pannel there are a hundred and odd persons; if Mr. Attorney is not obliged to shew his cause of challenge, when he challenges for the king, till all the pannel is gone through, this act of parliament will be of no validity whatsoever. If there had been but a few returned (24, or such a number) then there might have been some colour for going through the pannel before there was any cause assigned for the challenge; but since this modern practice has obtained to make so numerous a pannel, if they are not obliged to shew cause till the pannel is gone through, that law is entirely a dead letter, and of no significancy.

L. C. J. You know your objection is of no validity; you cite an act of parliament, and you know the constant practice is against you.

Just. *Eyre.* Though the counsel for the king must assign their cause of challenge, yet they are not obliged to do it till the pannel is gone through, and the jury-men returned, who are not challenged, are all sworn: this is a rule laid down in Hale's Pleas of the Crown, and has been always the constant practice in cases of this kind.

Mr. *Hungerford.* What your lordship directed in the last case is certainly precedented; but I would propose it as a convenience that the Attorney should, as he is every ways entitled, have the precedence, and might challenge first, and then we will determine after him.

L. C. J. No, we must not do that.

Cl. of the Cr. John Lowry. (Sworn.)

Cl. of the Cr. John How. Set aside for want of freehold.

Cl. of the Cr. Thomas Pratt. (Sworn.)

Cl. of the Cr. Richard Rogers.

Prisoner. I don't challenge him.

Att. Gen. I challenge him for the king.

Cl. of the Cr. Edward Pierson, Thomas Bland, William Spilltimber, Alexander Weller, Thomas Rand, John English, Joseph Unwin, George Frye. Challenged by the prisoner.

Cl. of the Cr. Weston Stileman.

Prisoner. I don't challenge him.

Att. Gen. I challenge him for the king.

Cl. of the Cr. John Crush.

Prisoner. I don't challenge him.

Att. Gen. I challenge him for the king.

Cl. of the Cr. Thomas Howlett.

Prisoner. I challenge him.

Serj. *Pengelly.* I don't know this method of proceeding: if the prisoner makes any challenge, it must be before he comes to the book to be sworn; but when he comes to lay his hand upon the book, he is too late to challenge then.

Prisoner. Whenever I make a full stop and don't say I challenge, you do.

Att. Gen. My lord, the prisoner is to declare whether he challenges or not; afterwards the king's counsel are to declare whether they challenge for the king, and the juryman is not to put his hand on the book till then.

L. C. J. He ought not to put his hand on the book till he is allowed a juryman; that if the king or the prisoner challenge him, they may do it before he lay his hand on the book.

Cl. of the Cr. Joseph Capon.

Prisoner. I don't challenge him.

Att. Gen. I challenge him for the king.

Mr. *Hungerford.* More have been challenged for the king, than hath been known in any public trial in my remembrance.

Att. Gen. I am surprized at this observation, when the king has an undoubted right of challenging whom he pleases, without shewing cause till the pannel is gone through.

L. C. J. It is always done.

Cl. of the Cr. John Clarke.

Prisoner. I challenge him.

Cl. of the Cr. William Chandler. Set aside for want of freehold.

Cl. of the Cr. William Burrows.

Prisoner. I challenge him.

Cl. of the Cr. Francis Aylett, sen. (Sworn.)

Cl. of the Cr. George Bailey, John Weekes, Thomas Ruggle. Challenged by the prisoner. (The prisoner spoke to the juryman.)

Sol. Gen. My lord, it hath been intimated to the prisoner once already, that he ought to propose his questions to the Court.

L. C. J. You are to ask no questions yourself, if you will tell us the question, we will propose it.

Prisoner. Only to know how he spells his name.

Cl. of the Cr. William May, Abraham Lake. Challenged by the prisoner.

Mr. *Hungerford.* My lord, it will be of some little use to know for certainty how many he hath challenged; they differ here in the computation.

Cl. of the Cr. He hath challenged 28 peremptorily.

Cl. of the Cr. Nathaniel Wessley.

Prisoner. I don't challenge him.

Att. Gen. I challenge him for the king.

Cl. of the Cr. Benjamin Rutland.

Prisoner. My lord, I desire he may be asked whether he doth not farm something under the king, or on the forest.

L. C. J. If it was of any service to you it should be done; but if it is so, it is no objection.

Mr. *Ketelbey.* The objection was once made in the case of sir William Perkins. It was recommended to the king's counsel.

L. C. J. I deny it. It was not recommended to the king's counsel, but the king's counsel did not insist upon it.

Just. *Fortescue Aland.* The Court in that case gave their opinion, that to be a servant to the king is no good cause of challenge, and my lord chief justice Holt and Treby were present, and Mr. Attorney-General did not insist on the juryman so challenged, but waved the matter without any recommendation of the Court.

Mr. *Ketelbey.* I know no other ways, than if Mr. Attorney will do it, as it was done in that case.

Att. Gen. I know nothing of the fact.

L. C. J. What do you do, do you challenge him or no?—*Prisoner.* I challenge him.

Cl. of the Cr. Alexander Marshall, Thomas Selby. Challenged by the prisoner.

Cl. of the Cr. John Milligande.

Mr. Hungerford. My lord, he is searching for a paper; he challenges him for cause.

Prisoner. My lord, what I have to offer, is, that this Mr. Milligande hath been heard to say, before he came here, that I ought to be hanged; and I apprehend that is good cause for challenging him, if I make it out.

David Martin called.

Cryer. You shall true answer make, &c.

Mr. Hungerford. Do you know Mr. Milligande?—*Martin.* Yes.

Mr. Hungerford. What have you heard him declare concerning the prisoner at the bar?

Martin. I heard him in conversation say, that he hoped he should be hanged, for he believed he was guilty.

Mr. Hungerford. This objection sure is right. [Mr. Milligande was not sworn.]

Cl. of the Cr. Robert Walker.

Prisoner. I challenge him.

Cl. of the Cr. William Nicholson. (Sworn.)

Prisoner. My lord, I have very near all my challenges, I think they may go on as they are called, if Mr. Attorney will challenge no more.

Att. Gen. You may go on your own way, I shall make no bargains with you.

Mr. Ketelbey. We do not offer any bargain, but only an expedient to save the time of the Court.

Cl. of the Cr. Nicholas Freeman.

Prisoner. I challenge him.

Cl. of the Cr. Christopher Hill. (Sworn.)

Cl. of the Cr. Stephen Wood.

Prisoner. I think I have done all my challenges.

Cl. of the Cr. You have two more.

Prisoner. Let them take them then as they come.

Att. Gen. I challenge him for the king.

Cl. of the Cr. Richard Bridge.

Prisoner. I challenge him.

(John Baines, set aside by consent, by reason of infirmity.)

Cl. of the Cr. Robert Barnard (Sworn.)

Cl. of the Cr. Leonard Bennet.

Prisoner. I do not challenge him.

Att. Gen. I challenge him for the king.

Cl. of the Cr. William Sandford.

Prisoner. My lord, I have the same objection to this gentleman as to the other; he hath declared his opinion before-hand, and that he must make a sacrifice of me.

L. C. J. Call your witness.

Mr. *Martin* sworn.

Mr. Ketelbey. Mr. Martin, do you know William Sandford of Romford?

Martin. Yes.

Mr. Ketelbey. Have you had any discourse with him about the prisoner at the bar?

Martin. He said, before he was summoned on the jury, that if he was one of the jury he would be for hanging of him. (Set aside.)

Cl. of the Cr. Thomas Waters.

Prisoner. Sir, I apprehend I have challenged thirty-five.

Cl. of the Cr. You have one more.

Prisoner. I will challenge no more, let them go on.

Cl. of the Cr. Thomas Waters, Richard Gray. (Sworn.)

William Wheatley.

Mr. Hungerford. I hope that what I am going to offer is proper. There is some little doubt how far he is gone in his challenges, it is said he hath one more, if the Court would indulge us so far as to let the persons challenged be called over.

Cl. of the Cr. It is impossible that we should mistake.

Mr. Hungerford. You say he hath one more?

Cl. of the Cr. Yes.

Cl. of the Cr. William Wheatly. (Sworn.)

Then the twelve Jurors who were sworn were counted, and their names were as follow, viz.

Thomas Clarke,	Wm. Nicholson, esq.
Isaac Potter,	Christopher Hill,
Hezekiah Haynes,	Robert Barnard,
John Lowry,	Thomas Waters,
Thomas Pratt,	Richard Gray,
Francis Aylett,	William Wheatly.

Cl. of the Cr. Cryer, make proclamation.

Cryer. O Yes! If any one can inform, &c.

Cl. of the Cr. Christopher Layer, hold up your hand. Gentlemen of the Jury, look upon the prisoner, and hearken to his cause.

He stands indicted by the name of Christopher Layer, late of the parish of St. Andrew's Holborn, in the county of Middlesex, esq. for that he, &c.——Upon this indictment he hath been lately arraigned, and thereunto hath pleaded Not Guilty, and for his trial hath put himself upon God and the country, which country you are. Your charge is to enquire whether he be guilty of this high treason, in manner and form as he stands indicted, or not guilty. If you find him guilty you shall enquire what goods or chattels, lands or tenements he had, at the time of the said high-treason committed, or at any time since. If you find him not guilty, you shall enquire whether he fled for it. If you find that he did fly for it, you shall enquire of his goods and chattels, as if you had found him guilty. If you find him not guilty, and that he did not fly for it, say so, and no more, and hear your evidence.

Mr. Wearg. May it please your lordship, and you gentlemen of the jury, this is an indictment against the prisoner for high-treason. The indictment sets forth, that he being a subject of his present majesty king George, but not having the fear of God in his heart, nor considering the duty of his allegiance, as a false traitor against his supreme, true, lawful, and undoubted lord, contriving and to the utmost

of his power intending to change, alter and subvert the government of this kingdom, lawfully and happily established under his present majesty, and to depose and deprive his said majesty of his title, honour, royal estate and government of this kingdom; and to advance to the crown and government of this realm, the person in the life of the late king James 2, pretended to be prince of Wales, and after the decease of the said king James pretending to be, and taking upon himself the stile and title of king of England, by the name of James 3, did upon the 25th day of August in the ninth year of his present majesty's reign, and at several other days and times, at Layton-Stone, in the county of Essex, falsely, maliciously, and traitorously, compass, imagine, and intend to depose our said sovereign lord king George, from his title, regal state and government, and the said king to kill and bring to utter destruction.

The Indictment further sets forth, That he the said Christopher Layer, to perfect and bring to effect his treason and traitorous purposes, on the said 25th day of August, and at several other days and times, at Layton-Stone aforesaid, together with divers other false traitors, to the jury unknown, did falsely, maliciously, and traitorously meet, consult, conspire and agree, to move and stir up an insurrection and rebellion in this kingdom, against our said sovereign lord the king.

The Indictment further sets forth, That he the said Christopher Layer, to perfect and complete his treason and traitorous purposes, on the said 25th of August, at Layton Stone aforesaid, with force and arms, did falsely, maliciously, and traitorously publish a certain malicious, seditious, and traitorous writing, containing in itself, and purporting to be, an exhortation and promise of rewards to the subjects of his said majesty, to persuade and excite them to take up arms and levy war against our said sovereign king George.

The Indictment further sets forth, That the said Christopher Layer, together with other false traitors to the jury unknown, to complete and bring to effect his traitorous purposes, on the said 25th day of August, at Layton-Stone aforesaid, with force and arms, did falsely, maliciously, and traitorously meet, consult, conspire and agree, to exalt to the crown and royal dignity of this realm the person in the life of the late king James 2nd, pretended to be prince of Wales, by means of an armed force and troops of soldiers, for that purpose to be raised and levied.

The Indictment further sets forth, That the said Christopher Layer, to perfect his said treason, on the said 25th day of August, at Layton-Stone aforesaid, maliciously and traitorously did raise, levy and retain several men, to the jury unknown, to take up arms and levy war within this kingdom, against our said sovereign lord the king.

That the said Christopher Layer, to perfect his treasonable purposes, on the said 25th day of August at Layton-Stone aforesaid, together with divers other false traitors, to the jury unknown, did falsely, maliciously and traitorously meet, conspire and agree, to take, seize, imprison and detain in custody the sacred person of our said sovereign lord the king, against the duty of his allegiance, against the peace of the king, his crown and dignity, and against the form of the statute in that case made and provided. To this indictment the prisoner hath pleaded, Not Guilty.

Serj. *Pengelly.** May it please your lordship, and you gentlemen of the jury; the prisoner at the bar, Mr. Layer, comes now to be tried before you, for a wicked and detestable conspiracy against the person of his majesty, and against his government; and this in favour of an attainted and abjured Pretender; a Pretender whom the prisoner himself has abjured in words, and ought to have renounced in his heart.

The indictment contains a charge of high treason against the prisoner at the bar, for compassing and intending the deposing the king, and also his death and destruction.

The particular facts laid to prove this traitorous imagination and intent, and which the prisoner put in execution, in order to bring to effect his treasonable purposes, are five.

The first is; that the prisoner, with other traitors, did consult, conspire and agree to raise a general insurrection and rebellion in this nation against his majesty.

The next; that he did publish a seditious and treasonable declaration, containing incitements, and promises of reward, whereby to excite and stir up his majesty's subjects to take up arms, and to levy war against his majesty within this realm.

And farther; that he, with other traitors, conspired, consulted and agreed by an armed force, to exalt, and bring the Pretender to his majesty's crown, to the throne of these kingdoms, and put him into the possession of the government thereof.

That he hath provided, levied, and retained several persons to take up arms, and to levy war against his majesty within this kingdom, for the executing these traitorous purposes.

The last overt act alleged, and to finish this conspiracy, is, that he, with the other traitors, consulted, conspired and agreed to seize upon, and to imprison the sacred person of his majesty.

Gentlemen, it is unnecessary, when these facts are opened to you, to acquaint you, that an attempt of this nature, if it had succeeded, would have been the subversion of the present happy establishment, and the Protestant succession, so often confirmed by the consent of the whole nation, and the only security of your religious and civil rights and liberties; they would all have been exposed to the arbitrary

* Said to be natural son to R. Cromwell. See Noble.

power of a Popish faction, under the tyranny of the Pretender.

Gentlemen, having said this to shew the nature of the offence; we (who are counsel for his majesty) shall proceed to lay before you the particular evidence against the prisoner at the bar: gentlemen, we have been so fortunate as to discover, and shall produce before you, the very plan itself upon which these conspirators proceeded, and which was to be put in execution.

We shall produce the plan under the prisoner's own hand-writing, and shew his acting correspondent to that plan, and in the execution thereof; this plan is a complete scheme of a treasonable insurrection, if that may be called complete which tends to utter destruction; for if the several parts therein contained had been executed, it would have been a total overturning of the government and constitution.

But you may observe a regularity going through the whole scheme.

The place of action, and the scene where this conspiracy was first to be put in execution, was in the city of London, and though in the plan itself the day is not mentioned, yet we shall shew to you, by the prisoner's own declaration and discovery, the time when it was to be executed; it was at the breaking up of the camp of his majesty's forces in Hyde Park.

Gentlemen, the plan contains a disposition of several officers, who were appointed to their particular stations, and were to be supplied with men designed to be procured for the execution of this plan; and, as the conspirators hoped to debauch part of the army, these officers were to be disposed at several places, to receive the private men, who, to the number of about 200 (towards the evening of the day agreed upon for execution) were to go singly out of the camp, without their arms, that they might more easily pass without observation, and were to be collected together at a place of rendezvous appointed them.

Gentlemen, from the management of the conspiracy, and the method they had taken to carry it on, and the hopes they had entertained, the conspirators concluded, they should have that number of 200 men ready in one body, to be commanded by proper officers, to make the first attempt, and the first stand.

At the place of rendezvous they were to be supplied with muskets ready loaded, and to receive their arms, which were to be distributed to them a little before the hour of nine; at which hour exactly, they were to march directly to the Tower of London, (as the plan proposes, and as the prisoner agreed and declared) where they might expect to be admitted, by the help and assistance of their friend, the officer upon the guard; and as soon as they had entered, they were to shut up the Tower-gates, and seize the arms.

Their general was to make his stand in person at the Royal Exchange; at the same time, it is directed by the plan, and was consulted upon, and agreed by the prisoner himself, they were to attempt to arrest the persons of several great men; and although the plan doth not name the persons, yet the prisoner hath explained it fully, and from his own mouth we shall prove, who the particular persons are, thus intended to be seized.

A declaration was to be dispersed to excite people to come in to the rebels; the gates of the city of London were to be shut up, and cannon brought down against them: they were then to set a guard over the Bank; but in the first place, they were to take out money sufficient to pay their men, such as they hoped would appear in their interest: their several other parties were to secure the artillery in the camp, the guns in the Privy Garden, the cannon and ammunition near the Horse Guards in St. James's Park.

These were the first operations: but to finish this villainous and execrable design, at the time the Tower was seized, and the city in arms, they were to send a detachment to seize the person of his majesty; and this they expressed in their plan to be, for the securing his person from the mob. But our king was to be delivered to their general at the Tower, and to be put under his custody. Thus the life of his majesty was to be in their power.

After this, there are several other dispositions of officers, and other persons, in order to excite and carry on the rebellion: some were to appear in Tothill-fields, some in Southwark, who were to give arms to the Minters; some at Greenwich to engage the watermen, and seize the magazine and powder there, and others at other places.

Gentlemen, you will find in this plan a preparation to make an entire conquest of the cities of London and Westminster; upon which the conspirators hoped the rest of the kingdom would declare for the Pretender: and there is one particular provision in the plan, that as they proceeded here, and found success, the general should immediately dispatch messengers into the several counties of England, to give intelligence of their progress, and to persuade those, who they looked upon to be in their interest, to declare for the Pretender, and to rise in their respective counties with their adherents.

This is the plan upon which the conspiracy is carried on; and as we shall produce this plan, which the prisoner hath supplied himself with, and written with his own hand, we beg leave to insist upon that, as strong evidence against the prisoner, upon the overt acts alleged in the indictment, of his consulting and conspiring to raise a rebellion and insurrection in the nation, and to seize the king's person.

Gentlemen, upon this plan, which the prisoner at the bar had thus furnished himself with, you will find, on the examination of our witnesses, that he constantly acted; he declared for, and promoted the execution of the principal parts of it.

Gentlemen, the witnesses we shall call who were engaged with the prisoner at the bar, in

this design, are Stephen Lynch and Matthew Plunkett; (which last had been a serjeant in the army) with whom the prisoner consulted, and whom he engaged in this desperate attempt; and we shall call some other witnesses to confirm several circumstances in their evidence.

Mr. Lynch is a person the prisoner might have reasonable hopes of engaging in this service: he had been formerly acquainted with one Dr. Murphey, who (I am instructed) was in the rebellion that broke out in the beginning of his majesty's reign: Mr. Lynch having been abroad, and absent for some time, returned into England in April last: upon his return, Dr. Murphey, his old acquaintance, meets with him, bids him welcome to England, and tells him that an affair was going on by which he might make his fortune, and advises him not to go out of England: that there was an intention to rise in favour of the Pretender, whom he called his king, and he would take care to recommend Mr. Lynch to a person who had a great part in that affair.

Mr. Lynch having suffered before, and run a great hazard, was unwilling immediately to enter into any engagement, but proposed, that if he could have sufficient encouragement, and what he expected as a reward, he should be willing to stay. Some time after Dr. Murphey introduces Lynch to the prisoner at the bar: The first time they met, I think it was the beginning of June last, they went to the prisoner's lodgings, which were then at the upper end of Chancery-lane; and he being about to remove his goods, desired them to go to a tavern, hard by, the Griffin tavern in Holborn. To this place the prisoner at the bar came, where Dr. Murphey presented Lynch to Mr. Layer, as the gentleman Dr. Murphey had before recommended to him; Mr. Layer received Mr. Lynch at that time with great civility, and tells him, that the recommendation he had received of Lynch from Dr. Murphey, made him not to doubt of his integrity and ability. Then they entered upon a consultation as to the carrying on of this design; Mr. Layer introduced it with representing an uneasiness in the nation in general, and how fair an opportunity there was to bring about a revolution: But Mr. Layer tells him, that one of the first and principal steps was to seize upon a general, or other great man (which you will observe is one part of the scheme) and upon Dr. Murphey's recommendation of him as a fit man for that service, Layer proposes to Lynch to undertake it. At this time Lynch acquainted Layer with the difficulties he had been in, and that an affair of this nature would take up some time before it could be put in execution, and he could not well engage in it without some farther encouragement, and a reward in money, in order that he might live easy and well while he staid here. Upon that, the prisoner at the bar promised him supplies of money for his subsistence and expences, what should be necessary, besides future rewards? and in pursuance of that promise, Layer hath several times supplied Lynch with money, to engage him more effectually in this design, and to support him in it. By these assurances Lynch was prevailed upon, and then agreed to enter into this conspiracy, and to take upon him the part therein that should be signified to him.

Gentlemen, the prisoner did not then make a full discovery of the person that was to be seized; but they were to meet again, as they did, about the latter end of June, at the same tavern: There the prisoner disclosed to the witness the particular person who was designed to be first seized. He acquaints the witness, that the person he (the prisoner) intended at their former meeting, and whom he designed the witness should seize, is the general of the army, the earl Cadogan; and Lynch was to find out such other persons as he could rely upon, for the assisting in, and effecting that enterprize; whereunto Lynch agreed. Layer then acquainted him what steps were already made in the conspiracy, and that they were to be headed and commanded by a general, who had wit, and courage and resolution, and who were supported by a great many friends, who had full power and authority from the Pretender (whom he called king) to act, and who was intrusted with a commission as his general, and whose orders Lynch was to obey.

The prisoner and Lynch had several other meetings, some at the Griffin tavern, and others at the prisoner's own house in Old Southampton-buildings, where the prisoner always encouraged Lynch to persist in the undertaking, by assuring him that all things went on well, and that the design was so well laid, that it could not probably miscarry: That they should be assisted by a great many officers, as soon as any motion was made, and that the common soldiers would declare upon the first opportunity: and being asked by Lynch, whether they had no foreign assistance to depend on? The prisoner answered, when we begin the business, we shall not want relief, if requisite. At one of these meetings the prisoner revealed to the witness, that, upon the rising, the Tower would be delivered up to them, by means of an officer who was to be upon the guard there on the day of execution; and that the people in the Mint in Southwark would come in to them; who, and all others that should repair to their party, should have arms delivered to them; and that the whole design should be put in execution at the breaking up of the camp, which would be the most proper time for the speaking with the soldiers in the army.

But at a meeting they had, some time in August, at the Queen's-head tavern in Great Queen-street, near Lincoln's-inn-fields, Lynch, complaining of the delay in putting their design in execution, and representing the danger of it, and withal pressing to know his intended general and commander, the prisoner gave him great encouragement, from the good prospect of their affairs, and the vigilance of the nobleman at the helm, who would lose no oppor-

tunity, when a convenient time should offer; and promised the witness, that he should be presented to this noble person in due time, from whom Lynch should receive his orders, or commission for executing his part, and entering upon his enterprize.

And accordingly, upon the 24th day of August, Mr. Layer invites Lynch to ride out of town with him the next day to take the air, which Lynch complied with; and on the 25th of August in the morning, Lynch went to the prisoner's house, who appointed Lynch to go before, and to stay without Aldgate.

At that time the prisoner asked the witness, whether he mounted with furniture or pistols; who answered that he did not, but that he had a double barrel fowling piece, which the prisoner's servant might carry; the prisoner directed him to get his piece ready loaden, because he (Layer) should carry something with him, which he would not lose for all the world. Lynch and the prisoner met without Aldgate at 11 before noon, and the prisoner's servant carried the gun, and they rode together towards Epping in Essex, which was the place they were going to.

Upon the way as they proceeded, Mr. Layer told the witness, that they were going to the house of the lord North and Grey, where he would present Lynch to his lordship as a particular friend of his (the prisoner's.) When they came to the Green-man at Layton-stone, at the entrance upon Epping-forest, the prisoner said, it might be best to eat something there, because they should be too late for the lord North and Grey's dinner; and accordingly they stopt at this house to dine.

Gentlemen, you will hear from the witness that at this place, the prisoner and Lynch had another consultation, wherein there was a repetition and confirmation of the whole design and conspiracy. At this Green-man, in your county, Gentlemen, you will find every principal part of the conspiracy, which was to be executed, consulted upon, and agreed unto by them both: The time and manner of the insurrection, the preparations making for it, the assistance to be provided and expected from the army, from many in the city of London, and from the generality of the nation, as was then suggested; the seizing the earl of Cadogan as the first step, and the surprising the Tower in the manner mentioned in the plan, by the help of the officer upon the guard; and then they proceeded to consider and approve the most daring and execrable part of the plan, which was then expressly repeated by the prisoner, the making a strong detachment to seize on his majesty's person.

The prisoner then declared his great satisfaction, in having engaged a person of such courage and conduct as Mr. Lynch, in the attempt of seizing the earl Cadogan; and likewise named the several other great men, hinted at in the scheme, whose persons were to be seized, and of whom he had made up his collection in pursuance of the plan; and then expressed his wishes so to bring matters to bear, that Mr. Lynch might likewise have the sole direction in apprehending the persons of some of his majesty's ministers, the lords Townshend and Carteret, his majesty's principal secretaries of state, and Mr. Walpole, first lord commissioner of the treasury.

These persons, most immediately intrusted in his majesty's service, were in the first place to be seized, in order to facilitate the design, and to make it successful. By this means the conspirators were to weaken his majesty's power of defending himself, when they had deprived him of his general, who was to command and conduct his army; of his two secretaries, who were to maintain and carry on his intelligence; and of the first commissioner of his treasury, who was to take care for his supply.

At this place these things were debated and considered between them: Mr. Lynch then again complained of the long delay, and wished that the affair might be carried on with more expedition: the prisoner thought no time so proper as the breaking up of the camp, when they might be supplied with soldiers; yet he was willing to hear any proposal from Mr. Lynch, and desired Mr. Lynch, that if he could think of any speedier method, or better scheme, to let him know it: but the witness was not capable to propose any way more proper, than what had been agreed upon the foot of the plan, as it had been explained by the prisoner himself, and therefore Mr. Lynch acquiesced therein.

Gentlemen, at that time, and at the same place, the overt act laid in the indictment, of publishing the treasonable writing, was committed; which was a declaration framed in the hand-writing of the prisoner, to be published immediately on the first breaking out of the conspiracy, to excite the king's subjects to take up arms, and to enter into a rebellion against him; and that it might have an influence on the army, where their hopes were placed, it took notice, that the king's general was seized, and in their custody.

In this declaration particular rewards are promised to the horse and foot in the army; different allowances are made; to every horseman and serjeant three guineas; two guineas to every corporal, and one guinea to every common soldier: all had promises of encouragement, favour, and future reward.

Gentlemen, after this was read, the prisoner put this declaration up into his pocket again; and afterwards (as he acquainted the witness) he himself made an alteration therein; it containing at first a general invitation to a revolt, but was not directed in the name of any particular person, therefore the prisoner thought fit afterwards to alter it, (as he informed Lynch) and to make it in the name of the Pretender, as king.

Gentlemen, though their hopes and expectations were founded on corrupting and debauching the army; I mention it only, as it was their expectation and design, without any imputation on the honour or fidelity of the gentlemen

of the army: but persons who undertake an affair of this nature, are always forward to expect their designs will be successful.

This, gentlemen, which I have mentioned to you, which will be more fully and particularly given in evidence to you, against the prisoner at the bar, was transacted and committed in the county of Essex.

My lord, this will be evidence of most of the overt acts alleged in the indictment in the county of Essex; but we shall confirm this evidence by the confession of the prisoner, proved by two witnesses, in whose presence he acknowledged the several facts which will be charged upon him in the county of Essex, by the testimony of Mr. Lynch; and shall make proof of other overt acts in the county of Middlesex: for it was impossible a design so extensive should be confined to one or two particular places within the same county: their consultations must be transferred from place to place, as opportunity offered, and as they thought most conducive to the purpose they were engaged in.

But the facts I have mentioned were transacted, gentlemen, in your county. After the prisoner and Mr. Lynch had settled these affairs at the Green-Man, they went to the house of my lord North and Grey at Epping: they staid there all night, and dined there the next day; the witness was introduced and presented to his lordship by Layer, and was civilly received and entertained; and the prisoner at the bar, as he and Lynch returned home, asked the witness how he liked his lordship, and assured Mr. Lynch for his encouragement, that he had greatly recommended him (the witness) to his lordship.

The prisoner and Lynch met a second time at the Lord North and Grey's house, where Lynch declared he would withdraw himself, if things were not put in execution; to which Layer replied, they would be sooner put in execution than Lynch imagined.

Gentlemen, you may perceive, by this evidence, the prisoner's explanation of the whole scheme, and his execution of it, so far as was in his power; though, blessed be God, these, or any farther attempts of this kind, have not hitherto prevailed.

The prisoner proceeds farther; and the next witness who will be produced against him, is one who had been a serjeant in the army, Matthew Plunkett. Plunkett had been formerly acquainted with the prisoner, and done him a piece of service; he was made use of to rescue some goods, when they were taken in execution at the house where Layer lodged, which was the beginning of their acquaintance: this, with some other recommendations from persons engaged in this design, induced the prisoner at the bar to make offers to him, as you will hear from the witness.

In June 1722, another person of the same name, one James Plunkett, was directed by Mr. Layer to go to this serjeant Plunkett, and desire him to meet Layer at the Italian coffee-house in Russel-court. The witness could not at that time, at least did not think it proper to go to the place appointed; but a day or two after, Mr. Layer meets him in Lincoln's-inn-fields, and takes him aside under a gate-way near Turn-stile: Layer then told Plunkett, he would inform him of a matter that would be of great advantage and benefit to him; there Layer let him into this conspiracy, and engaged the witness in it, not only by assurance and promise of reward, but by actual reward and money given him; and to induce and to encourage Plunkett the more, Layer acquainted him, that there were several persons of great estates, who were resolved to rescue themselves and the nation from the calamities and slavery that they then endured; and that they intended to bring about a revolution, and restore their king the Pretender; Plunkett objected, that the Pretender was a Papist; but the prisoner replied, there was no difference between a Papist and a Lutheran king, and therefore, that ought to make no impression upon Plunkett, to hinder him in joining to bring in a Papist.

The prisoner enquired of Plunkett, whether he had not an acquaintance in the army with some officers, and the common soldiers; and then engaged Plunkett to levy what persons he could into their service; and when the witness told Layer he knew twenty or thirty serjeants in the army, proper persons to be applied to, the prisoner gave Plunkett directions to make application to them, and to have them enrolled; and at that meeting the prisoner gave the witness money for his encouragement; and as they had several other meetings after this, to provide and levy men, the direction and employment given by Layer to the witness, was, to take care to find out their lodgings, and to make lists of the men, of their names, and places of abode, that they might be ready upon notice.

The prisoner not only employed Plunkett to procure and enrol as many as he could get, but gave him money for one particular person, one Child, who had served in the army, and who was recommended to Layer by Plunkett, as a person that had been disobliged by having been turned out of the service; Layer himself gave Plunkett half a guinea, for to give to this person, to engage him in this conspiracy, which Plunkett accordingly paid Child: Layer likewise ordered money at other times to be given to Plunkett, and at one time particularly acquainted him, that the prisoner had left a guinea with one Jefferies a non-juring parson, to give to him, who had given Plunkett but half a guinea.

The prisoner at the bar, to encourage Plunkett, acquainted him with the persons whom Layer expected to join in this conspiracy; and asked the witness his opinion of several; the witness will tell you the names of the persons, and what answers he gave; particularly that Layer asked him what he thought of the lord North and Grey for an officer to be at their

head? The witness answered, though he had never served under him, he looked upon his lordship as a great man.

They had meetings at several times, when Layer informed him, that things were in a great forwardness, though it was not yet a time to put their design in execution: but it went on so well, that it could not miscarry; that the duke of Ormond was to come with a single ship, with some officers; and that the design had been discovered to the French ambassador, who had given intelligence thereof to his majesty, or else the affair had been done before that time.

This Plunkett was employed, from time to time, to prepare lists of, and to collect and enroll fit persons to go on with this design; and particularly a number of serjeants, about 25, being dismissed from the army, the prisoner engaged Plunkett to go immediately to those persons, and take care to secure them.

Gentlemen, these traitorous consults and transactions were in July and August: and the witness will acquaint you more fully with the several particulars. There was one encouragement which the prisoner gave to this witness, which he did not mention to the other: he told Plunkett there would be an army of Dutch to come over in aid of his majesty; but the witness should see a number of half-pay officers, especially those of the name of Fitzgerald, on the side of his king (the Pretender,) that they could not doubt of success.

Gentlemen, under these encouragements and promises, and with these rewards, both these persons, the two witnesses, were engaged by the prisoner to enter into, and go on with, this conspiracy: the prisoner met them apart from time to time; they concerted and carried on such measures as they thought proper to execute this design, upon the foot of the plan, which hath been mentioned, and will be produced to you.

After we have produced the scheme, and likewise examined these two witnesses, who will give you an account of the progress which the prisoner made in this treason; we shall give you other plain and evident proof, which will demonstrate the treasonable intent of the prisoner at the bar, and his hopes of success.

We shall prove that the prisoner had been at Rome, and by his own confession, that he had seen the Pretender, and had conferences with him.

We shall prove that the prisoner had blank promissory notes, or receipts for money, signed with the Pretender's own hand, by the assumed title of James Rex, found amongst Layer's papers, which were remitted to him from Rome, and which he has acknowledged were sent over to him, for raising of money to carry on the cause of the Pretender. This is a strong evidence of the trust and credit reposed in him to execute this conspiracy; that the prisoner is a person fully entrusted; the receipts are in blank, and the prisoner had power to raise money on them, and to fill them up with such sums, as he thought proper and necessary.

Gentlemen, on the examination of our witnesses it will appear that Mr. Layer declared he had expended great sums of money in this affair, and that he has made it an excuse, why he had not money to supply some demands, because he had disbursed so much.

This therefore was to be his full power to raise money towards bringing the Pretender to the throne.

Besides these receipts, he had furnished himself with lists of the officers of the army, in order to know the situation and condition of the army, and to consider what advantage he could make by any of those in the lists: he had provided himself with lists of the officers of the Tower, which we apprehend was to render the design of seizing the Tower, when their friend the officer was on the guard, more probable and hopeful.

Besides this, we have letters which will be produced, that passed between sir William Ellis, an adherent of the Pretender's at Rome, and Mr. Layer, by the name of Fountaine, (a name he went by) encouraging him to go on with this design: we have the cypher, and the explanation of the cant words used in those letters. In one letter Ellis says, the best method of carrying on the manufactory (which is the insurrection) is to get good workmen, (by which is meant soldiers) and particularly to gain some of the ablest of Mrs. Barbara Smith's, (by Mrs. Barbara Smith is signified the army) and this would be very agreeable to all concerned, particularly to Mr. Atkins (which by their cypher or key is a name for the Pretender.)

And in another letter there is particular mention of Mr. Layer's intended general; you will find in the letter an explanation of him, thus; that he, who the prisoner in his letter called Simons, and described as a tenant, though his name was not then found in the rental, this writer believed he should be called Simmes, and says he is of the North, a grey-haired ancient man, for whom his friend has a particular esteem and value, as a very good tenant. This is the description, and this is the cant that passed between them; the explanation you will apprehend, by the cyphers that were found amongst the prisoner's papers.

Mr. Layer was not wanting in other preparations for this attempt; for he had provided arms in his own house, more than he could have occasion for, as a private subject; he had several muskets and other fire-arms; he had forty or fifty cartridges, loaded with bullets, ready made up for so many discharges, which might be delivered out to the people who should come in to them: if he had any use for such a quantity he will shew upon what occasion.

The discovery of the facts made by the witnesses occasioned the apprehending Mr. Layer, in whose house these arms were likewise seized.

Mr. Layer was so conscious of his own guilt,

that after he was apprehended, he made his escape out of the custody of the messenger in whose house he was placed; he offered a great reward to watermen to carry him off: this is a demonstration of his guilt, from the conviction of his own conscience.

Gentlemen, there are some other matters and papers which it will be proper to offer to your consideration; and most of these particular facts, which I have mentioned, or the most material of them, have been confirmed by Mr. Layer's own confession which he made upon his examination before the lords of the privy council. And when we have laid before you this evidence, as according to my instructions we shall very fully, I do not doubt but that you will do your duty as honest men.

We do not apply to your zeal, as you are Protestants and Englishmen; but upon the weight of the evidence, we shall appeal to your justice, to your oaths, and to your consciences, whether upon the whole proof to be laid before you, you will not remain fully satisfied, that the prisoner at the bar is Guilty of the high-treason whereof he stands indicted, and then that you do find him so.

Att. Gen. May it please your lordship, and you gentlemen of the jury, I am counsel on the same side for his majesty against the prisoner at the bar, who stands indicted for high-treason, in compassing and imagining the death of the king. The preservation of the life of the king is of that great importance to the safety and prosperity of his subjects, that even imaginations and intentions (which are but acts of the heart) to take it away, manifested by overt-acts, are an offence of the highest nature which the law takes notice of; but as imaginations and intentions of men are secret, and cannot be discovered but by their actions, there must be proof of some fact done in order to carry such intentions into execution, to make the offenders guilty of treason: therefore in this indictment five several overt-acts are laid; the first is, that the prisoner at the bar proposed, consulted and agreed with divers persons unknown to the grand jury, to raise an insurrection and rebellion within this kingdom against his majesty; the second, that he published a traitorous writing, purporting an exhortation, encouragement and promise of rewards, to persuade his majesty's faithful subjects to take up arms against him; the third, that he proposed, consulted and agreed to set the Pretender on the throne by armed force; the fourth, that he listed men to levy war against the king; and the fifth, that he proposed, consulted and agreed to seize and imprison his majesty's sacred person.

Gentlemen of the jury, you will readily agree with me that nothing can be more dreadful to a true Briton who hath any regard to himself or his posterity, or love to his country, than the fatal consequences that must have inevitably attended such wicked designs, had they been carried into execution with success: suppose a rebellion had been only raised, what could any man have expected from a rebellion in the heart of the kingdom, but plunder and rapine and murder, a total suspension of all civil right, and as long as the storm had continued, a just but terrible apprehensions of something yet worse to come: This would certainly have been the case, though the attempt should have been disappointed at last. But had it been attended with success, had his majesty's sacred person been seized and imprisoned, and had the Pretender been placed on the throne, what a scene of misery had opened! A mild administration, governed by the law of the land under an excellent prince, and as just and merciful as ever wore the crown, must have given way to arbitrary power; all your estates and properties must have been at the will of a provoked and exasperated usurper; liberty must have given way to slavery, and the best of religions to popish idolatry and superstition; and this, humanly speaking, without any prospect or hopes of relief: Nor would these dreadful calamities have been confined within the bounds of the king's dominions, for should the present happy establishment in his majesty and his royal family (the chief bulwark and support of the Protestant interest) be destroyed, the Protestant religion in general must be reduced to the lowest ebb, if not totally extinguished.

This is the nature of the crime, and these some of the fatal consequences that must have ensued, if the designs charged upon the prisoner by the indictment had took effect. But whether he is guilty of this great offence, is what you, gentlemen of the jury, are now to try.

My lord, it is my part to open the nature of the evidence that we shall produce to prove the several overt-acts laid in the indictment; and in stating it to your lordship and the jury, I shall follow the course of time in which the facts were done, that the case may be more easily apprehended, and shall open nothing but what I believe will be clearly verified by proof.

This prisoner at the bar, though brought up to the profession of the law, and a practiser in it, went beyond sea in the year 1720, and at the close of that year, according to our stile, or the beginning of the year 1721, arrived at Rome, where the Pretender then was; while the prisoner was there, he procured himself to be introduced to the Pretender, and had two private conferences with him, in which (but by what methods or representation is best known to himself) it is plain he obtained the Pretender's good opinion so far, that he thought him a fit person in whom a confidence for carrying on any designs against his majesty, and for setting himself on the throne, might be safely reposed: For this purpose a correspondence was then settled between the prisoner and some persons of distinction about the Pretender, and a cypher of names, of persons and things was agreed on, in order to carry this correspondence on. The prisoner returned to England about July 1721, after which he writ letters to his correspondent at Rome, and answers to them,

came from thence, whereby it will appear, that the prisoner had undertook a considerable part in the design then carrying on to bring the Pretender in; and although these letters are in obscure and cant terms, and fictitious names, yet by the help of the cypher, and from the nature of the letters themselves, it will easily appear to a common understanding for what purpose they were writ: This cypher and letters we shall prove to have been found among the prisoner's papers, which were seized soon after his commitment, and your lordship and the jury will see, when they come to be read, that notwithstanding the obscure terms, and the mysterious expressions inserted to dazzle the eye of the reader, when compared with the cypher they will be so intelligible, that they will be a plain evidence that a design was carrying on of raising a general rebellion in favour of the Pretender; for which purposes a scheme in writing was prepared, which we shall lay before your lordship and the gentlemen of the jury, that was likewise found among the prisoner's papers; we shall prove it to be writ with his own hand.

Mr. Serjeant Pengelly opened the nature of the scheme very fully, I shall not trouble your lordships with a repetition of what he said; when it comes to be read it will appear to be calculated for a general rising, it will prove a formed design to seize the Tower, to seize persons in great stations, to seize the Bank, and then at last to seize the person of the king himself, and to seize his royal highness the prince of Wales. This, we apprehend, will be a strong evidence of the overt-acts laid in the indictment, and will confirm the testimonies of the witnesses which we shall produce.

There are two witnesses we shall call to prove the overt acts laid in the indictment, they have already been mentioned to your lordship, Mr. Stephen Lynch, and serjeant Matthew Plunkett. Mr. Lynch will prove the several overt-acts laid in the indictment to have been committed by the prisoner in the county of Essex, where this indictment was found; as also overt-acts of the same nature committed by him in the county of Middlesex. But as it is improper to fall directly upon the proof of those facts, without first proving some other facts by way of introduction, as how the acquaintance between Mr. Lynch and the prisoner at the bar began, and how they came to be so intimate as to enter into a design of this nature, Mr. Lynch will give your lordships and the jury an account; that there had been acquaintance between this Mr. Lynch and one Dr. Murphey eight or nine years ago; that they had agreed to join in the rebellion which was in the beginning of his majesty's reign; after that was over Mr. Lynch went beyond sea, and continued there some time, and arrived in England in April last; that their acquaintance continued, and their principles were not altered; Mr. Lynch meeting Dr. Murphey, Dr. Murphey (who hath been mentioned to your lordships on a late occasion in this court and is not now to be found, but had a great acquaintance with the prisoner at the bar) told him he had something advantageous to communicate to him, and appointed a meeting next morning at a coffee-house in Cornhill, where they accordingly met; and Murphey then advised him not to go out of England, because he had an opportunity of making his fortune, telling him there would be a general rising in favour of the Pretender (whom he called king) and that it was carried on by gentlemen of note and credit; and if he would accept of the service, he would recommend him to one greatly concerned in that affair; Mr. Lynch, after consideration, agreed to stay.—After several other meetings between this Dr. Murphey and Mr. Lynch, at which their discourse generally turned upon this intended rising: about the beginning of June, Dr. Murphey introduced Mr. Lynch to the prisoner, as a person fit to be entrusted in the intended enterprize; they went to the Griffin tavern in Holborn; Mr. Layer there expressed the good opinion he had of Mr. Lynch upon the character he had received of him from so good a friend as this Dr. Murphey. They soon entered upon business, and the prisoner, after having made a representation of the uneasiness of the nation in general, and of the fair opportunity there was to bring about a revolution, proposed to Mr. Lynch to seize some general; to which the witness agreed. After this they had several other meetings, at which the discourse turned upon the same subject of a general rising in order to set the Pretender on the throne, and at one of them the prisoner declared he intended Lynch should seize the earl of Cadogan, and that the scheme was laid on a sound foundation, having a great man at the head of affairs, who wanted neither wit, courage nor resolution, and he would be backed by his friends. Several other propositions were made by the prisoner tending to the same end; to all which Mr. Lynch agreed, and they consulted how they might put those things in execution. In July last, Mr. Layer went into the country for fourteen or fifteen days, and after his return in the beginning of August, in pursuance of what they had concerted, Mr. Lynch and he went to view the earl of Cadogan's house, to see how practicable that design of seizing him at his house was. Mr. Lynch thought it feasible; but he grew uneasy at delays, and frequently told the prisoner that his circumstances would not permit him to continue here at his own expence; therefore to encourage him to stay, and persevere in the design, Mr. Layer gave him several sums of money.

My lord, upon the 24th of August last, the prisoner and Mr. Lynch agreed to ride out the next day to take the air: on the 25th, according to appointment, (which brings us now to the overt-acts in the county of Essex) they rid out together; the prisoner thought it proper to ride with arms, alleging that he had things about him he would not lose for any thing in the world. Upon the road he told Mr. Lynch they would go to lord North and Grey's,

with whom the prisoner had the honour to be well acquainted, and he would present Mr. Lynch to my lord as his particular acquaintance. It happened to be too late to get to lord North and Grey's by dinner, whereupon they put in at the Green-Man near Epping-forest, which, gentlemen, is at Layton-Stone in your county. Dinner not being ready at their coming thither, they entered into conversation on the former topics, and Mr. Lynch desiring to give him some insight into the scheme that was formed, the whole subject matter of their former consultations and discourses were repeated about seizing lord Cadogan, seizing the ministers of state, of getting part of the army to declare for them, and for seizing the king's person; and these things were then agreed to by them. At this place it was, that the prisoner pulled out of his pocket, and shewed to Mr. Lynch the traitorous writing laid in the indictment, which was a declaration to encourage a general rising, writ, as the witness believes, in the prisoner's own hand; and that part which contained the promises of rewards to be given to the soldiers and other persons to encourage them to come into their designs, was read by the witness; after which Mr. Layer took his paper away, and put it up in his pocket again. My lord, when they had dined, they went on to lord North and Grey's house (whom your lordship will hear mentioned by the evidence as the person thought on to be general in this undertaking); they staid there that night, and dined there next day, and afterwards they had a second meeting at lord North and Grey's. Your lordship and the jury will be pleased to observe, that this evidence will be a full and positive proof by this witness, that the overt-acts by publishing this traitorous writing, encouraging persons to take up arms against his majesty, of the consultations and agreement to levy war, to set the Pretender on the throne, and to seize his majesty's person, were done at the Green-Man, in the county of Essex: and this will likewise be an evidence, that all the overt-acts laid in the indictment (except publishing the traitorous writing) were done in the county of Middlesex.

My lord, the next witness we shall produce is Matthew Plunkett, formerly a serjeant in some regiment; he had been formerly acquainted with, and had been serviceable to the prisoner, and was very well acquainted with one James Plunkett, which James Plunkett was a great acquaintance of the prisoner's. This James Plunkett desired the witness, Matthew Plunkett, to meet the prisoner in July last at the Italian coffee-house in Russel-court, which the witness could not comply with; but the witness met the prisoner the Sunday following in Lincoln's-inn-fields; they were together near an hour, the prisoner gave him an account of the intended general rising, and asked the witness if he knew any old serjeants or soldiers who can discipline a mob, agreed with him to procure such, mentioned to him several persons fit to be at the head of this enterprize; and in order to make him diligent, he gave him at that time half a crown: and money was not only given him at that time, but a promise was made to him of further rewards. The prisoner having occasion to go in the country, one Jeffreys, a nonjuring clergyman, was sent to Matthew Plunkett by Layer (and this fact that I am going to open must not be barely considered as an act between Jeffreys and Plunkett, but it will be brought directly home to the act of Layer himself.) Jeffreys told Plunkett he came from the prisoner, and that he was employed by him to go to such as the witness was, who were old serjeants, to get a number of them together to discipline the mob, in order to the general rising: the next day they met again, and had the like discourse, and Jeffreys gave Matthew Plunkett half a guinea; and what brings this home to the prisoner, is, that he told Plunkett he had left a guinea with the nonjuring parson to give him, and talked with him on the same subject that Jeffreys had discoursed the witness before. But in fact Jeffreys did not give Plunkett the guinea, he gave him but half a guinea.

My lord, after Mr. Layer went out of town, Plunkett gave him an account what progress he had made in the affair. Plunkett told him that he had got several old soldiers that would bear a part in this business: the prisoner said he must take care to keep a list of their names, and the places where they lived, that they might be in a readiness when they should have occasion for them. And on Sunday before the prisoner was taken up, he told this Plunkett that a great many of his countrymen were turned out of the guards, and asked him, if he knew where they lodged; and upon the witness's answer that he did not, the prisoner directed him to take a list of their names, and places where they lodged, that he might have them when occasion required. So that here is Mr. Lynch a positive witness as to the overt-acts in Essex; Mr. Lynch and Mr. Plunkett positive as to the overt-acts in Middlesex, and their testimony confirmed by the scheme under the prisoner's own hand, and other papers, which we shall produce, found among his papers which will leave no room to doubt of the truth of their evidence. Besides, my lord, the prisoner being seized in September last, we shall give an account when he was in custody of a messenger, locked up in a room two pair of stairs high, he made a shift to make his escape, got to the water-side, and got a sculler to carry him over the river; he actually got over the river, but he was retaken again in St. George's-fields, and brought back to the messenger, and offered very considerable sums to the persons who retook him to let him go. I believe it is hardly to be imagined, a person perfectly innocent would venture to get out of a room two story high, and in the manner he did, and offer to give such a reward to the persons who retook him to let him get

off; he must be conscious to himself that he was in very great danger. There were likewise found in his house arms more than necessary for his use, and which he has confessed were to be used if there had been a rising.

My lord, to corroborate the testimony of the witnesses, we shall lay before your lordship and the gentlemen of the jury, the several papers which were found, I may say, in Mr. Layer's custody; I don't say they were actually taken in his custody, but it will come to the same thing; for he had delivered them in two parcels to Mrs. Mason the witness, whom we shall produce, with directions that she should take particular care of them; and they were seized in her custody not long after the prisoner was committed to the custody of a messenger; she saw every one of them marked by the persons who seized them, and marked them herself: there are not only the scheme and the cyphers and letters mentioned before, but also ten promissory notes subscribed by the Pretender: these promissory notes run,

'I acknowledge to have received from
'the sum of which sum
'I promise to repay with an interest for it at
'the rate of per ann. JAMES R.'

Can any man imagine, if there was nothing else to explain them, that these notes were there for nothing? Every body must believe that they were intended to be made use of to carry on the conspiracy; but we shall shew, by the prisoner's own confession, that they were sent over to him by sir William Ellis, in order to be made use of as occasion should serve, to promote these designs in favour of the Pretender. Among these papers several lists were found which will be produced, some of which contain the number of the officers and of the soldiers in the guards, some the names of other officers and soldiers, and some the number of the officers belonging to the Tower. It must be owned, that in some of those lists, there are the names of several persons of as great honour, loyalty, and fidelity to his majesty, as any subjects his majesty hath; yet the procuring these lists could be for nothing but to get an information of the number and character of the persons in his majesty's service, to know the strength of his majesty's forces, that intelligence might be given and schemes framed accordingly, and that there might be tampering with such as there could be any hopes of bringing over into the Pretender's interest: if the prisoner can put any other construction upon his having these lists in his custody, he will have an opportunity to do it. These things being proved, I apprehend there remains no doubt but that the prisoner will appear to be guilty of the crime charged on him in this indictment: but besides all this, we shall prove his confession by two witnesses, whereby he has confessed every overt-act laid in this indictment, the several transactions that Mr. Lynch and Plunkett will give account of, and almost all the facts that I have mentioned before. I shall conclude with this, gentlemen of the jury, that if we make out these facts as they have been opened, and according to my instructions, I have no reason to make the least question of it, it must be left to your consideration whether the prisoner at the bar is guilty of the offence for which he stands indicted or not: if you shall be satisfied by the evidence that he is, I do not doubt but you will do justice (which is all that is desired of you), and find a verdict for the king.

Sol. Gen. If your lordship pleases, we will now proceed to examine witnesses; and we desire that room may be made for the witnesses to come into court. Call Mr. Stephen Lynch.

L. C. J. You must make way there.

Prisoner. My lord, I humbly desire before this witness be sworn, that he may be examined upon a Voyer dire, whether he hath not a promise of pardon, or some other reward for swearing against me?

L. C. J. Sir, you cannot ask him that question.

Mr. *Hungerford.* I hope we shall be at liberty, and have a right to enter into an examination of this matter. If a man is represented to be in the same circumstances with the prisoner, and the prisoner led into the same circumstances by the person proposed as a witness, and afterwards by him involved in the same offence; if the person therefore proposed as a witness, hath a promise of pardon or some reward, upon condition that he would swear against the prisoner, he cannot by law be a good witness; the person proposed as a witness must be a credible witness, must be a legal witness, must not be convicted of perjury or any other notorious offence, a free witness that is not under restraint for the offence he accuses another of; and therefore we hope we have a right of asking whether he acts under the influence of any promise of reward, or the promise of a pardon: and the right we have of examining him to the promise of a reward or pardon, is supported by the authority of my lord chief justice Hale* as reported by Kelynge.

Mr. Ketelbey. My lord, I would not take up your lordship's time, and submit the weight of what Mr. Hungerford has offered to your consideration; but we found our right of asking this question upon my lord chief justice Hale's express declaration, set forth at large in Kelynge's Reports, fol. 18, which I have here in my hand. I must likewise beg leave to observe to your lordship, that this question was formerly asked in the trial of Gordon and Dorrell to one Adams, that had been in the same conspiracy with those that were brought to trial for high treason, and was then produced as a witness against them; the book was then brought into court, and the quotation read before your lordship, and according to my notes, of that trial, which I have here brought with me for my justification, (I submit to your lord-

* Hale's Hist. P. C. B. 2, cap. 37.

of his power intending to change, alter and subvert the government of this kingdom, lawfully and happily established under his present majesty, and to depose and deprive his said majesty of his title, honour, royal estate and government of this kingdom; and to advance to the crown and government of this realm, the person in the life of the late king James 2, pretended to be prince of Wales, and after the decease of the said king James pretending to be, and taking upon himself the stile and title of king of England, by the name of James 3, did upon the 25th day of August in the ninth year of his present majesty's reign, and at several other days and times, at Layton-Stone, in the county of Essex, falsely, maliciously, and traitorously, compass, imagine, and intend to depose our said sovereign lord king George, from his title, regal state and government, and the said king to kill and bring to utter destruction.

The Indictment further sets forth, That he the said Christopher Layer, to perfect and bring to effect his treason and traitorous purposes, on the said 25th day of August, and at several other days and times, at Layton-Stone aforesaid, together with divers other false traitors, to the jury unknown, did falsely, maliciously, and traitorously meet, consult, conspire and agree, to move and stir up an insurrection and rebellion in this kingdom, against our said sovereign lord the king.

The Indictment further sets forth, That he the said Christopher Layer, to perfect and complete his treason and traitorous purposes, on the said 25th of August, at Layton Stone aforesaid, with force and arms, did falsely, maliciously, and traitorously publish a certain malicious, seditious, and traitorous writing, containing in itself, and purporting to be, an exhortation and promise of rewards to the subjects of his said majesty, to persuade and excite them to take up arms and levy war against our said sovereign king George.

The Indictment further sets forth, That the said Christopher Layer, together with other false traitors to the jury unknown, to complete and bring to effect his traitorous purposes, on the said 25th day of August, at Layton-Stone aforesaid, with force and arms, did falsely, maliciously, and traitorously meet, consult, conspire and agree, to exalt to the crown and royal dignity of this realm the person in the life of the late king James 2nd, pretended to be prince of Wales, by means of an armed force and troops of soldiers, for that purpose to be raised and levied.

The Indictment further sets forth, That the said Christopher Layer, to perfect his said treason, on the said 25th day of August, at Layton-Stone aforesaid, maliciously and traitorously did raise, levy and retain several men, to the jury unknown, to take up arms and levy war within this kingdom, against our said sovereign lord the king.

That the said Christopher Layer, to perfect his treasonable purposes, on the said 25th day of August at Layton-Stone aforesaid, together with divers other false traitors, to the jury unknown, did falsely, maliciously and traitorously meet, conspire and agree, to take, seize, imprison and detain in custody the sacred person of our said sovereign lord the king, against the duty of his allegiance, against the peace of the king, his crown and dignity, and against the form of the statute in that case made and provided. To this indictment the prisoner hath pleaded, Not Guilty.

Serj. *Pengelly.** May it please your lordship, and you gentlemen of the jury; the prisoner at the bar, Mr. Layer, comes now to be tried before you, for a wicked and detestable conspiracy against the person of his majesty, and against his government; and this in favour of an attainted and abjured Pretender; a Pretender whom the prisoner himself has abjured in words, and ought to have renounced in his heart.

The indictment contains a charge of high treason against the prisoner at the bar, for compassing and intending the deposing the king, and also his death and destruction.

The particular facts laid to prove this traitorous imagination and intent, and which the prisoner put in execution, in order to bring to effect his treasonable purposes, are five.

The first is; that the prisoner, with other traitors, did consult, conspire and agree to raise a general insurrection and rebellion in this nation against his majesty.

The next; that he did publish a seditious and treasonable declaration, containing incitements, and promises of reward, whereby to excite and stir up his majesty's subjects to take up arms, and to levy war against his majesty within this realm.

And farther; that he, with other traitors, conspired, consulted and agreed by an armed force, to exalt, and bring the Pretender to his majesty's crown, to the throne of these kingdoms, and put him into the possession of the government thereof.

That he hath provided, levied, and retained several persons to take up arms, and to levy war against his majesty within this kingdom, for the executing these traitorous purposes.

The last overt act alleged, and to finish this conspiracy, is, that he, with the other traitors, consulted, conspired and agreed to seize upon, and to imprison the sacred person of his majesty.

Gentlemen, it is unnecessary, when these facts are opened to you, to acquaint you, that an attempt of this nature, if it had succeeded, would have been the subversion of the present happy establishment, and the Protestant succession, so often confirmed by the consent of the whole nation, and the only security of your religious and civil rights and liberties; they would all have been exposed to the arbitrary

* Said to be natural son to R. Cromwell. See Noble.

power of a Popish faction, under the tyranny of the Pretender.

Gentlemen, having said this to shew the nature of the offence; we (who are counsel for his majesty) shall proceed to lay before you the particular evidence against the prisoner at the bar: gentlemen, we have been so fortunate as to discover, and shall produce before you, the very plan itself upon which these conspirators proceeded, and which was to be put in execution.

We shall produce the plan under the prisoner's own hand-writing, and shew his acting correspondent to that plan, and in the execution thereof; this plan is a complete scheme of a treasonable insurrection, if that may be called complete which tends to utter destruction; for if the several parts therein contained had been executed, it would have been a total overturning of the government and constitution.

But you may observe a regularity going through the whole scheme.

The place of action, and the scene where this conspiracy was first to be put in execution, was in the city of London, and though in the plan itself the day is not mentioned, yet we shall shew to you, by the prisoner's own declaration and discovery, the time when it was to be executed; it was at the breaking up of the camp of his majesty's forces in Hyde Park.

Gentlemen, the plan contains a disposition of several officers, who were appointed to their particular stations, and were to be supplied with men designed to be procured for the execution of this plan; and, as the conspirators hoped to debauch part of the army, these officers were to be disposed at several places, to receive the private men, who, to the number of about 200 (towards the evening of the day agreed upon for execution) were to go singly out of the camp, without their arms, that they might more easily pass without observation, and were to be collected together at a place of rendezvous appointed them.

Gentlemen, from the management of the conspiracy, and the method they had taken to carry it on, and the hopes they had entertained, the conspirators concluded, they should have that number of 200 men ready in one body, to be commanded by proper officers, to make the first attempt, and the first stand.

At the place of rendezvous they were to be supplied with muskets ready loaded, and to receive their arms, which were to be distributed to them a little before the hour of nine; at which hour exactly, they were to march directly to the Tower of London, (as the plan proposes, and as the prisoner agreed and declared) where they might expect to be admitted, by the help and assistance of their friend, the officer upon the guard; and as soon as they had entered, they were to shut up the Tower-gates, and seize the arms.

Their general was to make his stand in person at the Royal Exchange; at the same time, it is directed by the plan, and was consulted upon, and agreed by the prisoner himself, they were to attempt to arrest the persons of several great men; and although the plan doth not name the persons, yet the prisoner hath explained it fully, and from his own mouth we shall prove, who the particular persons are, thus intended to be seized.

A declaration was to be dispersed to excite people to come in to the rebels; the gates of the city of London were to be shut up, and cannon brought down against them: they were then to set a guard over the Bank; but in the first place, they were to take out money sufficient to pay their men, such as they hoped would appear in their interest: their several other parties were to secure the artillery in the camp, the guns in the Privy Garden, the cannon and ammunition near the Horse Guards in St. James's Park.

These were the first operations: but to finish this villainous and execrable design, at the time the Tower was seized, and the city in arms, they were to send a detachment to seize the person of his majesty; and this they expressed in their plan to be, for the securing his person from the mob. But our king was to be delivered to their general at the Tower, and to be put under his custody. Thus the life of his majesty was to be in their power.

After this, there are several other dispositions of officers, and other persons, in order to excite and carry on the rebellion: some were to appear in Tothill-fields, some in Southwark, who were to give arms to the Minters; some at Greenwich to engage the watermen, and seize the magazine and powder there, and others at other places.

Gentlemen, you will find in this plan a preparation to make an entire conquest of the cities of London and Westminster; upon which the conspirators hoped the rest of the kingdom would declare for the Pretender: and there is one particular provision in the plan, that as they proceeded here, and found success, the general should immediately dispatch messengers into the several counties of England, to give intelligence of their progress, and to persuade those, who they looked upon to be in their interest, to declare for the Pretender, and to rise in their respective counties with their adherents.

This is the plan upon which the conspiracy is carried on; and as we shall produce this plan, which the prisoner hath supplied himself with, and written with his own hand, we beg leave to insist upon that, as strong evidence against the prisoner, upon the overt acts alleged in the indictment, of his consulting and conspiring to raise a rebellion and insurrection in the nation, and to seize the king's person.

Gentlemen, upon this plan, which the prisoner at the bar had thus furnished himself with, you will find, on the examination of our witnesses, that he constantly acted; he declared for, and promoted the execution of the principal parts of it.

Gentlemen, the witnesses we shall call who were engaged with the prisoner at the bar, in

this design, are Stephen Lynch and Matthew Plunkett; (which last had been a serjeant in the army) with whom the prisoner consulted, and whom he engaged in this desperate attempt; and we shall call some other witnesses to confirm several circumstances in their evidence.

Mr. Lynch is a person the prisoner might have reasonable hopes of engaging in this service: he had been formerly acquainted with one Dr. Murphey, who (I am instructed) was in the rebellion that broke out in the beginning of his majesty's reign: Mr. Lynch having been abroad, and absent for some time, returned into England in April last: upon his return, Dr. Murphey, his old acquaintance, meets with him, bids him welcome to England, and tells him that an affair was going on by which he might make his fortune, and advises him not to go out of England: that there was an intention to rise in favour of the Pretender, whom he called his king, and he would take care to recommend Mr. Lynch to a person who had a great part in that affair.

Mr. Lynch having suffered before, and run a great hazard, was unwilling immediately to enter into any engagement, but proposed, that if he could have sufficient encouragement, and what he expected as a reward, he should be willing to stay. Some time after Dr. Murphey introduces Lynch to the prisoner at the bar: The first time they met, I think it was the beginning of June last, they went to the prisoner's lodgings, which were then at the upper end of Chancery-lane; and he being about to remove his goods, desired them to go to a tavern, hard by, the Griffin tavern in Holborn. To this place the prisoner at the bar came, where Dr. Murphey presented Lynch to Mr. Layer, as the gentleman Dr. Murphey had before recommended to him; Mr. Layer received Mr. Lynch at that time with great civility, and tells him, that the recommendation he had received of Lynch from Dr. Murphey, made him not to doubt of his integrity and ability. Then they entered upon a consultation as to the carrying on of this design; Mr. Layer introduced it with representing an uneasiness in the nation in general, and how fair an opportunity there was to bring about a revolution: But Mr. Layer tells him, that one of the first and principal steps was to seize upon a general, or other great man (which you will observe is one part of the scheme) and upon Dr. Murphey's recommendation of him as a fit man for that service, Layer proposes to Lynch to undertake it. At this time Lynch acquainted Layer with the difficulties he had been in, and that an affair of this nature would take up some time before it could be put in execution, and he could not well engage in it without some farther encouragement, and a reward in money, in order that he might live easy and well while he staid here. Upon that, the prisoner at the bar promised him supplies of money for his subsistence and expences, what should be necessary, besides future rewards? and in pursuance of that promise, Layer hath several times supplied Lynch with money, to engage him more effectually in this design, and to support him in it. By these assurances Lynch was prevailed upon, and then agreed to enter into this conspiracy, and to take upon him the part therein that should be signified to him.

Gentlemen, the prisoner did not then make a full discovery of the person that was to be seized; but they were to meet again, as they did, about the latter end of June, at the same tavern: There the prisoner disclosed to the witness the particular person who was designed to be first seized. He acquaints the witness, that the person he (the prisoner) intended at their former meeting, and whom he designed the witness should seize, is the general of the army, the earl Cadogan; and Lynch was to find out such other persons as he could rely upon, for the assisting in, and effecting that enterprize; whereunto Lynch agreed. Layer then acquainted him what steps were already made in the conspiracy, and that they were to be headed and commanded by a general, who had wit, and courage and resolution, and who were supported by a great many friends, who had full power and authority from the Pretender (whom he called king) to act, and who was intrusted with a commission as his general, and whose orders Lynch was to obey.

The prisoner and Lynch had several other meetings, some at the Griffin tavern, and others at the prisoner's own house in Old Southampton-buildings, where the prisoner always encouraged Lynch to persist in the undertaking, by assuring him that all things went on well, and that the design was so well laid, that it could not probably miscarry: That they should be assisted by a great many officers, as soon as any motion was made, and that the common soldiers would declare upon the first opportunity: and being asked by Lynch, whether they had no foreign assistance to depend on? The prisoner answered, when we begin the business, we shall not want relief, if requisite. At one of these meetings the prisoner revealed to the witness, that, upon the rising, the Tower would be delivered up to them, by means of an officer who was to be upon the guard there on the day of execution; and that the people in the Mint in Southwark would come in to them; who, and all others that should repair to their party, should have arms delivered to them; and that the whole design should be put in execution at the breaking up of the camp, which would be the most proper time for the speaking with the soldiers in the army.

But at a meeting they had, some time in August, at the Queen's-head tavern in Great Queen-street, near Lincoln's-inn-fields, Lynch, complaining of the delay in putting their design in execution, and representing the danger of it, and withal pressing to know his intended general and commander, the prisoner gave him great encouragement, from the good prospect of their affairs, and the vigilance of the nobleman at the helm, who would lose no oppor-

tunity, when a convenient time should offer; and promised the witness, that he should be presented to this noble person in due time, from whom Lynch should receive his orders, or commission for executing his part, and entering upon his enterprize.

And accordingly, upon the 24th day of August, Mr. Layer invites Lynch to ride out of town with him the next day to take the air, which Lynch complied with; and on the 25th of August in the morning, Lynch went to the prisoner's house, who appointed Lynch to go before, and to stay without Aldgate.

At that time the prisoner asked the witness, whether he mounted with furniture or pistols; who answered that he did not, but that he had a double barrel fowling piece, which the prisoner's servant might carry; the prisoner directed him to get his piece ready loaden, because he (Layer) should carry something with him, which he would not lose for all the world. Lynch and the prisoner met without Aldgate at 11 before noon, and the prisoner's servant carried the gun, and they rode together towards Epping in Essex, which was the place they were going to.

Upon the way as they proceeded, Mr. Layer told the witness, that they were going to the house of the lord North and Grey, where he would present Lynch to his lordship as a particular friend of his (the prisoner's.) When they came to the Green-man at Layton-stone, at the entrance upon Epping-forest, the prisoner said, it might be best to eat something there, because they should be too late for the lord North and Grey's dinner; and accordingly they stopt at this house to dine.

Gentlemen, you will hear from the witness that at this place, the prisoner and Lynch had another consultation, wherein there was a repetition and confirmation of the whole design and conspiracy. At this Green-man, in your county, Gentlemen, you will find every principal part of the conspiracy, which was to be executed, consulted upon, and agreed unto by them both: The time and manner of the insurrection, the preparations making for it, the assistance to be provided and expected from the army, from many in the city of London, and from the generality of the nation, as was then suggested; the seizing the earl of Cadogan as the first step, and the surprising the Tower in the manner mentioned in the plan, by the help of the officer upon the guard; and then they proceeded to consider and approve the most daring and execrable part of the plan, which was then expressly repeated by the prisoner, the making a strong detachment to seize on his majesty's person.

The prisoner then declared his great satisfaction, in having engaged a person of such courage and conduct as Mr. Lynch, in the attempt of seizing the earl Cadogan; and likewise named the several other great men, hinted at in the scheme, whose persons were to be seized, and of whom he had made up his collection in pursuance of the plan; and then expressed his wishes so to bring matters to bear, that Mr. Lynch might likewise have the sole direction in apprehending the persons of some of his majesty's ministers, the lords Townshend and Carteret, his majesty's principal secretaries of state, and Mr. Walpole, first lord commissioner of the treasury.

These persons, most immediately intrusted in his majesty's service, were in the first place to be seized, in order to facilitate the design, and to make it successful. By this means the conspirators were to weaken his majesty's power of defending himself, when they had deprived him of his general, who was to command and conduct his army; of his two secretaries, who were to maintain and carry on his intelligence; and of the first commissioner of his treasury, who was to take care for his supply.

At this place these things were debated and considered between them: Mr. Lynch then again complained of the long delay, and wished that the affair might be carried on with more expedition: the prisoner thought no time so proper as the breaking up of the camp, when they might be supplied with soldiers; yet he was willing to hear any proposal from Mr. Lynch, and desired Mr. Lynch, that if he could think of any speedier method, or better scheme, to let him know it: but the witness was not capable to propose any way more proper, than what had been agreed upon the foot of the plan, as it had been explained by the prisoner himself, and therefore Mr. Lynch acquiesced therein.

Gentlemen, at that time, and at the same place, the overt act laid in the indictment, of publishing the treasonable writing, was committed; which was a declaration framed in the hand-writing of the prisoner, to be published immediately on the first breaking out of the conspiracy, to excite the king's subjects to take up arms, and to enter into a rebellion against him; and that it might have an influence on the army, where their hopes were placed, it took notice, that the king's general was seized, and in their custody.

In this declaration particular rewards are promised to the horse and foot in the army; different allowances are made; to every horseman and serjeant three guineas; two guineas to every corporal, and one guinea to every common soldier: all had promises of encouragement, favour, and future reward.

Gentlemen, after this was read, the prisoner put this declaration up into his pocket again; and afterwards (as he acquainted the witness) he himself made an alteration therein; it containing at first a general invitation to a revolt, but was not directed in the name of any particular person, therefore the prisoner thought fit afterwards to alter it, (as he informed Lynch) and to make it in the name of the Pretender, as king.

Gentlemen, though their hopes and expectations were founded on corrupting and debauching the army; I mention it only, as it was their expectation and design, without any imputation on the honour or fidelity of the gentlemen

of the army: but persons who undertake an affair of this nature, are always forward to expect their designs will be successful.

This, gentlemen, which I have mentioned to you, which will be more fully and particularly given in evidence to you, against the prisoner at the bar, was transacted and committed in the county of Essex.

My lord, this will be evidence of most of the overt acts alleged in the indictment in the county of Essex; but we shall confirm this evidence by the confession of the prisoner, proved by two witnesses, in whose presence he acknowledged the several facts which will be charged upon him in the county of Essex, by the testimony of Mr. Lynch; and shall make proof of other overt acts in the county of Middlesex: for it was impossible a design so extensive should be confined to one or two particular places within the same county: their consultations must be transferred from place to place, as opportunity offered, and as they thought most conducive to the purpose they were engaged in.

But the facts I have mentioned were transacted, gentlemen, in your county. After the prisoner and Mr. Lynch had settled these affairs at the Green-Man, they went to the house of my lord North and Grey at Epping: they staid there all night, and dined there the next day; the witness was introduced and presented to his lordship by Layer, and was civilly received and entertained; and the prisoner at the bar, as he and Lynch returned home, asked the witness how he liked his lordship, and assured Mr. Lynch for his encouragement, that he had greatly recommended him (the witness) to his lordship.

The prisoner and Lynch met a second time at the Lord North and Grey's house, where Lynch declared he would withdraw himself, if things were not put in execution; to which Layer replied, they would be sooner put in execution than Lynch imagined.

Gentlemen, you may perceive, by this evidence, the prisoner's explanation of the whole scheme, and his execution of it, so far as was in his power; though, blessed be God, these, or any farther attempts of this kind, have not hitherto prevailed.

The prisoner proceeds farther; and the next witness who will be produced against him, is one who had been a serjeant in the army, Matthew Plunkett. Plunkett had been formerly acquainted with the prisoner, and done him a piece of service; he was made use of to rescue some goods, when they were taken in execution at the house where Layer lodged, which was the beginning of their acquaintance: this, with some other recommendations from persons engaged in this design, induced the prisoner at the bar to make offers to him, as you will hear from the witness.

In June 1722, another person of the same name, one James Plunkett, was directed by Mr. Layer to go to this serjeant Plunkett, and desire him to meet Layer at the Italian coffee-house in Russel-court. The witness could not at that time, at least did not think it proper to go to the place appointed; but a day or two after, Mr. Layer meets him in Lincoln's-inn-fields, and takes him aside under a gate-way near Turn-stile: Layer then told Plunkett, he would inform him of a matter that would be of great advantage and benefit to him; there Layer let him into this conspiracy, and engaged the witness in it, not only by assurance and promise of reward, but by actual reward and money given him; and to induce and to encourage Plunkett the more, Layer acquainted him, that there were several persons of great estates, who were resolved to rescue themselves and the nation from the calamities and slavery that they then endured; and that they intended to bring about a revolution, and restore their king the Pretender; Plunkett objected, that the Pretender was a Papist; but the prisoner replied, there was no difference between a Papist and a Lutheran king, and therefore, that ought to make no impression upon Plunkett, to hinder him in joining to bring in a Papist.

The prisoner enquired of Plunkett, whether he had not an acquaintance in the army with some officers, and the common soldiers; and then engaged Plunkett to levy what persons he could into their service; and when the witness told Layer he knew twenty or thirty serjeants in the army, proper persons to be applied to, the prisoner gave Plunkett directions to make application to them, and to have them enrolled; and at that meeting the prisoner gave the witness money for his encouragement; and as they had several other meetings after this, to provide and levy men, the direction and employment given by Layer to the witness, was, to take care to find out their lodgings, and to make lists of the men, of their names, and places of abode, that they might be ready upon notice.

The prisoner not only employed Plunkett to procure and enrol as many as he could get, but gave him money for one particular person, one Child, who had served in the army, and who was recommended to Layer by Plunkett, as a person that had been disobliged by having been turned out of the service; Layer himself gave Plunkett half a guinea, for to give to this person, to engage him in this conspiracy, which Plunkett accordingly paid Child: Layer likewise ordered money at other times to be given to Plunkett, and at one time particularly acquainted him, that the prisoner had left a guinea with one Jefferies a non-juring parson, to give to him, who had given Plunkett but half a guinea.

The prisoner at the bar, to encourage Plunkett, acquainted him with the persons whom Layer expected to join in this conspiracy; and asked the witness his opinion of several; the witness will tell you the names of the persons, and what answers he gave; particularly that Layer asked him what he thought of the lord North and Grey for an officer to be at their

head? The witness answered, though he had never served under him, he looked upon his lordship as a great man.

They had meetings at several times, when Layer informed him, that things were in a great forwardness, though it was not yet a time to put their design in execution: but it went on so well, that it could not miscarry; that the duke of Ormond was to come with a single ship, with some officers; and that the design had been discovered to the French ambassador, who had given intelligence thereof to his majesty, or else the affair had been done before that time.

This Plunkett was employed, from time to time, to prepare lists of, and to collect and enroll fit persons to go on with this design; and particularly a number of serjeants, about 25, being dismissed from the army, the prisoner engaged Plunkett to go immediately to those persons, and take care to secure them.

Gentlemen, these traitorous consults and transactions were in July and August: and the witness will acquaint you more fully with the several particulars. There was one encouragement which the prisoner gave to this witness, which he did not mention to the other: he told Plunkett there would be an army of Dutch to come over in aid of his majesty; but the witness should see a number of half-pay officers, especially those of the name of Fitzgerald, on the side of his king (the Pretender,) that they could not doubt of success.

Gentlemen, under these encouragements and promises, and with these rewards, both these persons, the two witnesses, were engaged by the prisoner to enter into, and go on with, this conspiracy: the prisoner met them apart from time to time; they concerted and carried on such measures as they thought proper to execute this design, upon the foot of the plan, which hath been mentioned, and will be produced to you.

After we have produced the scheme, and likewise examined these two witnesses, who will give you an account of the progress which the prisoner made in this treason; we shall give you other plain and evident proof, which will demonstrate the treasonable intent of the prisoner at the bar, and his hopes of success.

We shall prove that the prisoner had been at Rome, and by his own confession, that he had seen the Pretender, and had conferences with him.

We shall prove that the prisoner had blank promissory notes, or receipts for money, signed with the Pretender's own hand, by the assumed title of James Rex, found amongst Layer's papers, which were remitted to him from Rome, and which he has acknowledged were sent over to him, for raising of money to carry on the cause of the Pretender. This is a strong evidence of the trust and credit reposed in him to execute this conspiracy; that the prisoner is a person fully entrusted; the receipts are in blank, and the prisoner had power to raise money on them, and to fill them up with such sums, as he thought proper and necessary.

Gentlemen, on the examination of our witnesses it will appear that Mr. Layer declared he had expended great sums of money in this affair, and that he has made it an excuse, why he had not money to supply some demands, because he had disbursed so much.

This therefore was to be his full power to raise money towards bringing the Pretender to the throne.

Besides these receipts, he had furnished himself with lists of the officers of the army, in order to know the situation and condition of the army, and to consider what advantage he could make by any of those in the lists: he had provided himself with lists of the officers of the Tower, which we apprehend was to render the design of seizing the Tower, when their friend the officer was on the guard, more probable and hopeful.

Besides this, we have letters which will be produced, that passed between sir William Ellis, an adherent of the Pretender's at Rome, and Mr. Layer, by the name of Fountaine, (a name he went by) encouraging him to go on with this design: we have the cypher, and the explanation of the cant words used in those letters. In one letter Ellis says, the best method of carrying on the manufactory (which is the insurrection) is to get good workmen, (by which is meant soldiers) and particularly to gain some of the ablest of Mrs. Barbara Smith's, (by Mrs. Barbara Smith is signified the army) and this would be very agreeable to all concerned, particularly to Mr. Atkins (which by their cypher or key is a name for the Pretender.)

And in another letter there is particular mention of Mr. Layer's intended general; you will find in the letter an explanation of him, thus; that he, who the prisoner in his letter called Simons, and described as a tenant, though his name was not then found in the rental, this writer believed he should be called Simmes, and says he is of the North, a grey-haired ancient man, for whom his friend has a particular esteem and value, as a very good tenant. This is the description, and this is the cant that passed between them; the explanation you will apprehend, by the cyphers that were found amongst the prisoner's papers.

Mr. Layer was not wanting in other preparations for this attempt; for he had provided arms in his own house, more than he could have occasion for, as a private subject; he had several muskets and other fire-arms; he had forty or fifty cartridges, loaded with bullets, ready made up for so many discharges, which might be delivered out to the people who should come in to them: if he had any use for such a quantity he will shew upon what occasion.

The discovery of the facts made by the witnesses occasioned the apprehending Mr. Layer, in whose house these arms were likewise seized.

Mr. Layer was so conscious of his own guilt,

that after he was apprehended, he made his escape out of the custody of the messenger in whose house he was placed; he offered a great reward to watermen to carry him off: this is a demonstration of his guilt, from the conviction of his own conscience.

Gentlemen, there are some other matters and papers which it will be proper to offer to your consideration; and most of these particular facts, which I have mentioned, or the most material of them, have been confirmed by Mr. Layer's own confession which he made upon his examination before the lords of the privy council. And when we have laid before you this evidence, as according to my instructions we shall very fully, I do not doubt but that you will do your duty as honest men.

We do not apply to your zeal, as you are Protestants and Englishmen; but upon the weight of the evidence, we shall appeal to your justice, to your oaths, and to your consciences, whether upon the whole proof to be laid before you, you will not remain fully satisfied, that the prisoner at the bar is Guilty of the high-treason whereof he stands indicted, and then that you do find him so.

Att. Gen. May it please your lordship, and you gentlemen of the jury, I am counsel on the same side for his majesty against the prisoner at the bar, who stands indicted for high-treason, in compassing and imagining the death of the king. The preservation of the life of the king is of that great importance to the safety and prosperity of his subjects, that even imaginations and intentions (which are but acts of the heart) to take it away, manifested by overt-acts, are an offence of the highest nature which the law takes notice of; but as imaginations and intentions of men are secret, and cannot be discovered but by their actions, there must be proof of some fact done in order to carry such intentions into execution, to make the offenders guilty of treason: therefore in this indictment five several overt-acts are laid; the first is, that the prisoner at the bar proposed, consulted and agreed with divers persons unknown to the grand jury, to raise an insurrection and rebellion within this kingdom against his majesty; the second, that he published a traitorous writing, purporting an exhortation, encouragement and promise of rewards, to persuade his majesty's faithful subjects to take up arms against him; the third, that he proposed, consulted and agreed to set the Pretender on the throne by armed force; the fourth, that he listed men to levy war against the king; and the fifth, that he proposed, consulted and agreed to seize and imprison his majesty's sacred person.

Gentlemen of the jury, you will readily agree with me that nothing can be more dreadful to a true Briton who hath any regard to himself or his posterity, or love to his country, than the fatal consequences that must have inevitably attended such wicked designs, had they been carried into execution with success: suppose a rebellion had been only raised, what could any man have expected from a rebellion in the heart of the kingdom, but plunder and rapine and murder, a total suspension of all civil right, and as long as the storm had continued, a just but terrible apprehensions of something yet worse to come: This would certainly have been the case, though the attempt should have been disappointed at last. But had it been attended with success, had his majesty's sacred person been seized and imprisoned, and had the Pretender been placed on the throne, what a scene of misery had opened! A mild administration, governed by the law of the land under an excellent prince, and as just and merciful as ever wore the crown, must have given way to arbitrary power; all your estates and properties must have been at the will of a provoked and exasperated usurper; liberty must have given way to slavery, and the best of religions to popish idolatry and superstition; and this, humanly speaking, without any prospect or hopes of relief: Nor would these dreadful calamities have been confined within the bounds of the king's dominions, for should the present happy establishment in his majesty and his royal family (the chief bulwark and support of the Protestant interest) be destroyed, the Protestant religion in general must be reduced to the lowest ebb, if not totally extinguished.

This is the nature of the crime, and these some of the fatal consequences that must have ensued, if the designs charged upon the prisoner by the indictment had took effect. But whether he is guilty of this great offence, is what you, gentlemen of the jury, are now to try.

My lord, it is my part to open the nature of the evidence that we shall produce to prove the several overt-acts laid in the indictment; and in stating it to your lordship and the jury, I shall follow the course of time in which the facts were done, that the case may be more easily apprehended, and shall open nothing but what I believe will be clearly verified by proof.

This prisoner at the bar, though brought up to the profession of the law, and a practiser in it, went beyond sea in the year 1720, and at the close of that year, according to our stile, or the beginning of the year 1721, arrived at Rome, where the Pretender then was; while the prisoner was there, he procured himself to be introduced to the Pretender, and had two private conferences with him, in which (but by what methods or representation is best known to himself) it is plain he obtained the Pretender's good opinion so far, that he thought him a fit person in whom a confidence for carrying on any designs against his majesty, and for setting himself on the throne, might be safely reposed: For this purpose a correspondence was then settled between the prisoner and some persons of distinction about the Pretender, and a cypher of names, of persons and things was agreed on, in order to carry this correspondence on. The prisoner returned to England about July 1721, after which he writ letters to his correspondent at Rome, and answers to them,

came from thence, whereby it will appear, that the prisoner had undertook a considerable part in the design then carrying on to bring the Pretender in; and although these letters are in obscure and cant terms, and fictitious names, yet by the help of the cypher, and from the nature of the letters themselves, it will easily appear to a common understanding for what purpose they were writ: This cypher and letters we shall prove to have been found among the prisoner's papers, which were seized soon after his commitment, and your lordship and the jury will see, when they come to be read, that notwithstanding the obscure terms, and the mysterious expressions inserted to dazzle the eye of the reader, when compared with the cypher they will be so intelligible, that they will be a plain evidence that a design was carrying on of raising a general rebellion in favour of the Pretender; for which purposes a scheme in writing was prepared, which we shall lay before your lordship and the gentlemen of the jury, that was likewise found among the prisoner's papers; we shall prove it to be writ with his own hand.

Mr. Serjeant Pengelly opened the nature of the scheme very fully, I shall not trouble your lordships with a repetition of what he said; when it comes to be read it will appear to be calculated for a general rising, it will prove a formed design to seize the Tower, to seize persons in great stations, to seize the Bank, and then at last to seize the person of the king himself, and to seize his royal highness the prince of Wales. This, we apprehend, will be a strong evidence of the overt-acts laid in the indictment, and will confirm the testimonies of the witnesses which we shall produce.

There are two witnesses we shall call to prove the overt acts laid in the indictment, they have already been mentioned to your lordship, Mr. Stephen Lynch, and serjeant Matthew Plunkett. Mr. Lynch will prove the several overt-acts laid in the indictment to have been committed by the prisoner in the county of Essex, where this indictment was found; as also overt-acts of the same nature committed by him in the county of Middlesex. But as it is improper to fall directly upon the proof of those facts, without first proving some other facts by way of introduction, as how the acquaintance between Mr. Lynch and the prisoner at the bar began, and how they came to be so intimate as to enter into a design of this nature, Mr. Lynch will give your lordships and the jury an account; that there had been acquaintance between this Mr. Lynch and one Dr. Murphey eight or nine years ago; that they had agreed to join in the rebellion which was in the beginning of his majesty's reign; after that was over Mr. Lynch went beyond sea, and continued there some time, and arrived in England in April last; that their acquaintance continued, and their principles were not altered; Mr. Lynch meeting Dr. Murphey, Dr. Murphey (who hath been mentioned to your lordships on a late occasion in this court and is not now to be found, but had a great acquaintance with the prisoner at the bar) told him he had something advantageous to communicate to him, and appointed a meeting next morning at a coffee-house in Cornhill, where they accordingly met; and Murphey then advised him not to go out of England, because he had an opportunity of making his fortune, telling him there would be a general rising in favour of the Pretender (whom he called king) and that it was carried on by gentlemen of note and credit; and if he would accept of the service, he would recommend him to one greatly concerned in that affair; Mr. Lynch, after consideration, agreed to stay.—After several other meetings between this Dr. Murphey and Mr. Lynch, at which their discourse generally turned upon this intended rising: about the beginning of June, Dr. Murphey introduced Mr. Lynch to the prisoner, as a person fit to be entrusted in the intended enterprize; they went to the Griffin tavern in Holborn; Mr. Layer there expressed the good opinion he had of Mr. Lynch upon the character he had received of him from so good a friend as this Dr. Murphey. They soon entered upon business, and the prisoner, after having made a representation of the uneasiness of the nation in general, and of the fair opportunity there was to bring about a revolution, proposed to Mr. Lynch to seize some general; to which the witness agreed. After this they had several other meetings, at which the discourse turned upon the same subject of a general rising in order to set the Pretender on the throne, and at one of them the prisoner declared he intended Lynch should seize the earl of Cadogan, and that the scheme was laid on a sound foundation, having a great man at the head of affairs, who wanted neither wit, courage nor resolution, and he would be backed by his friends. Several other propositions were made by the prisoner tending to the same end; to all which Mr. Lynch agreed, and they consulted how they might put those things in execution. In July last, Mr. Layer went into the country for fourteen or fifteen days, and after his return in the beginning of August, in pursuance of what they had concerted, Mr. Lynch and he went to view the earl of Cadogan's house, to see how practicable that design of seizing him at his house was. Mr. Lynch thought it feasible; but he grew uneasy at delays, and frequently told the prisoner that his circumstances would not permit him to continue here at his own expence; therefore to encourage him to stay, and persevere in the design, Mr. Layer gave him several sums of money.

My lord, upon the 24th of August last, the prisoner and Mr. Lynch agreed to ride out the next day to take the air: on the 25th, according to appointment, (which brings us now to the overt-acts in the county of Essex) they rid out together; the prisoner thought it proper to ride with arms, alleging that he had things about him he would not lose for any thing in the world. Upon the road he told Mr. Lynch they would go to lord North and Grey's,

Lynch. There was a common friendship between us.

Mr. *Ketelbey.* How came he to trust you? Would you have trusted him in a business of treason?

Lynch. We have been concerned in affairs together.

Mr. *Ketelbey.* How long was you at the Green Man with Mr. Layer?

Lynch. I cannot say exactly the time.

Mr. *Ketelbey.* I don't ask you exactly to a minute or two; but was you there an hour, or two, or three hours?

Lynch. I cannot say whether we were there an hour or two; but we had something dressed for dinner, and the matter was discoursed of by us before dinner.

Mr. *Ketelbey.* When you first alighted from your horses, what room was you shewn into?

Lynch. We were shewn into a room up one pair of stairs on the right hand, the first room.

Mr. *Ketelbey.* Was it towards the street or backwards?

Lynch. It looked into the common road.

Mr. *Ketelbey.* Did you look out of the window and see a person of your acquaintance?

Lynch. I saw two gentlemen, but did not know them.

Mr. *Ketelbey.* Did you not look out of the window, and say, you saw a gentleman of your acquaintance?

Lynch. I said I saw two gentlemen that I thought I had seen before.

Mr. *Ketelbey.* Did not you go down to those gentlemen?

Lynch. No, I did not go down to them.

Mr. *Ketelbey.* Did not you go down to them?

Lynch. No.

Mr. *Ketelbey.* Did not you say so to Mr. Layer, in the drawer's presence?—*Lynch.* No.

Prisoner. Did you not tell me that those gentlemen were your acquaintance?

Lynch. I told you those two gentlemen I had seen before.

Prisoner. How long were we together at the Green Man? Were the horses put up, or not?

Lynch. I cannot tell.

Prisoner. Was there any thing dressed for our dinner but a beef-steak?

Lynch. No, nothing else.

Prisoner. Did not you go down stairs, pretending you went to those gentlemen?

Lynch. No, I did not tell you I went to those gentlemen.

Prisoner. Did you not go down stairs?

Lynch. Yes, I did, and came up again immediately.

Prisoner. Was not dinner on table when you came up again?

Lynch. I went down twice before dinner.

Prisoner. Then you must consequently leave me in the room.

Lynch. I went down to make water.

Prisoner. What did you go down the second time for?

Lynch. Out of curiosity.

Prisoner. How long did you stay?

Lynch. Not both times above two minutes.

Prisoner. I was then alone, when you went down?—*Lynch.* Yes.

Prisoner. Was this discourse before or after dinner?

Lynch. It was before dinner.

Prisoner. When you came up the second time, was not dinner on the table?

Lynch. It was come up.

Prisoner. And yet the discourse we had was before dinner?

Lynch. Yes, it was before dinner.

Prisoner. How much time might we spend before dinner, half an hour or an hour?

Lynch. I do not remember, but it was a good while.

Prisoner. Was not the double barrel gun in the room?

Lynch. I do not know whether it was there, or whether your servant had it.

Prisoner. At the time of dinner was my servant, or drawer, in the room?

Lynch. Neither of them was in the room.

Prisoner. You say we were a good while, you and I, alone; pray, how long?

Lynch. I cannot say positively how long.

Mr. *Hungerford.* Have you any copy of that part of the paper he gave you to read, and which you read?—*Lynch.* No.

Mr. *Hungerford.* Was the whole of it of any length?

Lynch. To the best of my remembrance it was a common sheet of paper.

Mr. *Hungerford.* Did you read the whole?

Lynch. No; he doubled it down, and gave me the latter part of it to read.*

Mr. *Ketelbey.* Some things you seem to remember, and some things you do not remember: was it printed, or written?

Lynch. It was written.

Mr. *Ketelbey.* Did he not mention it to be the prince of Orange's declaration?

Lynch. No, he did not.

Prisoner. Was not the paper blotted?

Lynch. In that I saw there were two or three places interlined.

Mr. *Hungerford.* My lord, I think the gentlemen did say they had not done with their evidence, with relation to an overt-act in Essex; if they have not, they will do well to go on now: but we hope they shall not go into overt-acts committed in any other county, till they make the whole of their proofs of an overt-act in Essex.

L. C. J. You have been told, they should proceed in their own method, and when they have done, you may make what observations may be of service to your client.

Mr. *Hungerford.* Relations of fact arising in another county, which have no relation to the fact arising in Essex, we hope they shall not go into, to amuse or captivate the jury, the court and the auditory.

L. C. J. Sure never any thing was like this!

* See Attorney General *v.* Le Merchant, 2 T. Rep. 200.

it is our province to give directions, and we think it not proper to interrupt the king's counsel, but that they should proceed in their own method: you shall be heard as long as you please, when you come to make your observations.

Sol. Gen. The prisoner hath a right to say any thing that is proper to the court and the jury, in his defence, but he must say it openly; he is not to talk privately with the jury; though I am sure they are gentlemen of so great worth and honour as not to be influenced.

Att. Gen. I dare say the jury will not be influenced; but he talks to his counsel so loud, that the jury may easily hear every word he says.

L. C. J. He must not speak so loud.

Att. Gen. I just now heard him say, It was strange to go on with evidence that would not be to the purpose. I heard him, as I sat here; let him deny it if he can.

L. C. J. I hope you will not offer any thing of that kind, Mr. Layer: you have a right to discourse with your counsel, but you must do it in such a manner as the jury may not hear.

Mr. Hungerford. Indeed, my lord, he shall have no encouragement from us for any such conduct.

Matthew Plunkett sworn.

Serj. *Chesh.* Tell my lord and the jury, whether you know the prisoner at the bar.

Plunkett. Yes, I do know him.

Serj. *Chesh.* Will you tell my lord and the jury upon what account and by whose means, you first became acquainted?

Plunkett. One major Barnewell brought me first acquainted with Mr. Layer; he had an execution in his house in Great Queen-street, and this major Barnewell came to me, and desired me to get a couple of grenadiers. I brought him two; we went to Mr. Layer's house, and his clerk let us in at the back door, and the grenadiers turned the officers out, and Mr. Layer gave them a crown, and a glass of brandy.

Serj. *Chesh.* When was this?

Plunkett. As near as I can guess, it is going on of five years.

Serj. *Chesh.* Tell my lord and the jury what month in this last year you renewed the acquaintance, and who brought you to him?

Plunkett. The next acquaintance I had afterwards, was by major Barnewell, who was arrested, and he sent me with a letter to his house, to desire him to relieve him.

Serj. *Chesh.* Do you know any thing of one James Plunkett?

Plunkett. Yes; he came to me from Mr. Layer, in July last, to desire me to meet him; but how this counsellor Layer and this James Plunkett came acquainted I do not know.

Serj. *Chesh.* What was he?

Plunkett. I don't know what he is; he is acquainted with Mr. Layer.

Serj. *Chesh.* What profession is he of?

Plunkett. I don't know; nor how he lives, or gets his bread.

L. C. J. Go on.

Plunkett. Mr. Layer paid the charges for major Barnewell, and brought him out of the Marshalsea.

Mr. *Reeve.* How long was this ago?

Plunkett. To the best of my knowledge four years ago.

Mr. *Reeve.* He is giving an account how he came to be acquainted with Mr. Layer; the first time was upon the account of rescuing Mr. Layer's goods; the other time was by Mr. Layer's redeeming major Barnewell out of the Marshalsea, and paying his debt: Give an account how you came last acquainted with him.

Plunkett. I being at home, in my own room——

Mr. *Reeve.* How long ago?

Plunkett. I believe, as near as I can guess, it was last July.

Mr. *Reeve.* Give an account of what happened then.

Plunkett. Now this James Plunkett came into my room, sat down, and he asked me how I did, and said, he was glad to see me; and he asked me, are you not well acquainted in the army? Yes, saith I, I know a great many in the army, both officers and common soldiers. Do you know, saith he, any of the serjeants of the guards? I know some of them, said I. He brought me out of the room, because my wife was there, and then he opened his mind to me: Saith he, do you know one Mr. Layer? (I had forgot the gentleman, being so slightly acquainted with him;) No, saith I, I don't know him. No matter, saith he, I have appointed a place for you to meet him at, at the Italian coffee-house in Russel-court; and at the end of this, Mr. Plunkett asked me to keep correspondence with them for the Pretender's service. I did not go to the Italian coffee-house; not being in a proper station, nor having money for that purpose: So I did not think proper to go to the Italian coffee-house; but the Sunday following I went to St. Andrew's church, and meeting with some friends, they told me Dr. Sacheverel preached there; and so they decoyed me to go and hear him preach there. When service was over, to the best of my knowledge, as I was going home, between twelve and one o'clock, I met Mr. Layer accidentally in Lincoln's-inn-fields; Mr. Layer he looked at me, he was really a perfect stranger to me, for I did not know him again; saith he, is not your name Plunkett? Yes, saith I. Was there not one with you, the other night, one James Plunkett? Yes, Sir, says I. Where did he desire you to go? said he. I answered, he desired me to go to the Italian coffee-house in Russel-court. Saith he, it is well enough: Do you not know me? No, saith I, you have the advantage of me; I ask your pardon, for I don't remember you. Don't you remember one Layer? said he. Then I called to mind that I knew the gentleman. Saith he, will you walk on this side? I walked back again towards Little Turn-Stile, and we struck up the wall-side, and just as we came

under a great coach-house gate-way, we went in, and in the gate-way he talked to me; saith he, I am told that you are a very honest man, and well affected so and so.

Mr. *Reeve.* Well-affected, to whom?

Plunkett. Well-affected as to the business of the Pretender. At the same time we had this talk, he bid me not mention it to James Plunkett, that I had seen him: Then he asked me if I knew any of the serjeants in the guards; for, saith he, I want such old soldiers as you are yourself, that could discipline a mob, for we have other men enough amongst us; but if we could get some old soldiers, if that could be managed, they would be finely rewarded. But, Sir, saith I, the Pretender is a Papist. Saith he, what difference is there between a Papist king, and a Lutheran king?

Mr. *Reeve.* He said he wanted such old soldiers as you; for what?

Plunkett. He wanted them to discipline a mob, and to put them in order. Then we began to reason about the Pretender; why, saith he, we had as good have a Papist for our king as a Lutheran.

Serj. *Cheshire.* What did you object?

Plunkett. I said he was a Papist. Says he, we had as good have a Papist for our king, as to have a Lutheran, I don't know what difference there is; but as it was, the nation was enslaved, and the people were obliged to be slaves. I asked him, Sir, who is the promoter of this, that may join us? You see, says he, what injustice is done to you, you have served abroad, and others are put over your head; you have had and found great hardships. I asked him who promoted this? He said, the lord North and Grey. Says I, he is a peer of the realm. Saith he, he is a fine general. And the earl of Strafford he mentioned.

Mr. *Reeve.* Who did he say was a fine general?

Plun. He said my lord North and Grey was a fine general; and asked me what I thought of him? I said, I had never been under his command, but I looked upon him to be a great man, and one of the peers of the land. And then he mentioned my lord Strafford, what do you think of him? To which I made the like answer. And what do you think of general Primrose? I said, I had lately seen him at Chelsea, passing by in his coach, but that he was an old man; however, Mr. Layer said he was a brave general. Then he asked me what I thought of general Webb? I said I had heard of his fame.

Serj. *Peng.* When he had said my lord North and Grey was a fine general, and when you asked who promoted it, whether did Mr. Layer tell you what their design was to do? When Mr. Layer asked you what do you think of this person and the other person, what were they to do?—*Plun.* To raise a rebellion.

Serj. *Peng.* Was that talked of that time?

Plun. Not at that time.

L. C. J. You say he wanted such old soldiers as you; for what purpose? You say he wanted them to discipline a mob, and put it in order?—*Plun.* Yes, my lord.

L. C. J. Did he tell you how many he wanted?

Plun. No; he did not say how many.

Serj. *Chesh.* Was there any thing said about their names at that time?

Plun. Mr. Layer would have me take a list of their names, and to enrol them, that they might know where they lodged, and where they quartered; that so when he wanted them, he might send for them to be in readiness.

Serj. *Chesh.* Was there any number he asked you the names of?

Plun. I said, I knew a great many, and that I could get 25. Saith he, you ought to have a list of their names, where they lodge, that they may be in readiness for a call: and saith he, This would have gone on some time ago, only somebody made discovery of it to the French ambassador, and he wrote to the regent, and so it was discovered to the king: and saith he, The duke of Ormond was to come in one ship, and general Dillon in another, and they would bring their numbers with them; and then I should see that the army would not oppose them. And when I parted from him, he gave me half a crown to drink.

Serj. *Chesh.* What was that to do?

Plun. It was to encourage me. And he said he would send a messenger to me; and in a day or two afterwards there came a messenger from him: I was not at home, but he spoke with my wife.

Serj. *Chesh.* Who was that?

Plun. The un-juring minister.

Att. Gen. What was his name?

Plun. His name was Jeffreys.

Att. Gen. You say, you was not at home the first time; did he come again?

Plun. Yes.

Att. Gen. How long after?

Plun. A matter of five or six days after.

Att. Gen. Did you see him?

Plun. Yes, I saw him.

Att. Gen. What passed between you?

Plun. He asked me if I knew Mr. Layer? I told him I did. He then carried me to the Castle tavern in Drury-lane, where we drank two pints of wine, which he paid for; after the non-juring parson told me he came from Layer, who gave his service, and told me that he was employed by Mr. Layer to go to such as I was, who were old serjeants, to get a parcel together to discipline citizens, and other mob in the country.

Att. Gen. What farther passed between you and Mr. Jeffreys?

Mr. *Ketelbey.* I beg leave to object to that question.

Att. Gen. If I do not bring it home to Mr. Layer, it will signify nothing.

L. C. J. Mr. Ketelbey, you know that many times in discourse it is necessary to mention introductions, to let in what is material: whatever passed between him and Jeffreys does not affect your client.

Mr. *Hungerford.* It is a constant rule, if a man speaks of a third person's transactions, it is declared as nothing, and commonly stopped from being given in evidence.

L. C. J. If they begin right, they will give evidence in such a method as to be understood: by declaring what passed between him and Plunkett, the evidence may be the better understood.

Mr. *Ketelbey.* I do not doubt your lordship's giving direction right; but I observe this, lest some of the jury should not take it right.

L. C. J. Let the evidence be given in such a manner as may be understood; what is introductory goes for nothing, but it is in order to explain the evidence.

Att. Gen. What passed between you and the non-juring parson at the Castle tavern?

Plun. He talked to me of the same subject, desiring me to get men in readiness; he told me, he had a great many places to go to besides me with this errand, and then we parted. Another time he came to me, we went to an alehouse, to the Cock and Bottle in the Strand, where he gave me half a guinea, and said, there is a token; Mr. Layer had sent it me to give me encouragement.

Serj. *Peng.* At that time that Mr. Layer said he would send a messenger to you, did he mention any thing of money?

Plun. Mr. Layer said he would send money by the messenger to me.

L. C. J. You say he told you, that he would send you money by the messenger?

Plun. He told me so.

L. C. J. Afterwards you say, one came to you as from him, and encouraged you, and gave you half a guinea?

Plun. He did: I am upon my oath before God and man, I will say nothing but the truth.

Serj. *Cheshire.* Did you receive any message from Jeffreys to appoint a meeting with Mr. Layer?

Plun. Some time afterwards I met Mr. Layer at eight o'clock, at the Castle tavern in Drury-lane; there was the landlord and Mr. Layer, who had two bottles of wine, and some bread and cheese: he would have had me eat, but I told him I could not eat; but I drank of the wine. When he had discoursed with me about the affair, to encourage me he gave me a crown; I went cross Lincoln's-inn-fields, so went home.

Mr. *West.* What did he give you the crown for?

Plun. To encourage me to list men for the Pretender.

Att. Gen. Had you any letter by the penny post?

Plun. That morning Mr. Layer was going to Norfolk, Plunkett told me Mr. Layer was going out of town, and would be glad to see me. I went to Mr. Layer, and his horses were at the door; he desired me to walk up two pair of stairs forwards, and by the same token ordered his servant to charge his blunderbuss in the room. Saith Mr. Layer, I have given a guinea to the non-juring minister to give you, to do what service you can; and when I am abroad, you may be sure I shall not be idle.

Mr. *Reeve.* Was any proposal made to any other person?

Plun. I brought an old soldier, who had been in the service many years.

Mr. *Reeve.* What was his name?

Plun. John Child; I brought him, as thinking he might have been of service to them.

L. C. J. What was it Mr. Layer said when he was going into the country?

Plun. He told me he would not be idle there.

Serj. *Pengelly.* What did he desire of you?

Plun. He desired me to see and get what soldiers I could for him: I came to the non-juring minister, and told him I had got 25. Then Mr. Layer asked me, why I did not bring a list of them, that he might know where their habitations were, and that they might be in readiness at the time. I disputed with Mr. Layer what they would do for arms? No fear of arms, saith he; arms will be provided for them. After he returned from the country to the town, this Mr. Plunkett was the first messenger that was sent to me; he came and told me Mr. Layer was come to town; and this non-juring parson sent me a letter by the penny post; Mr. Child was in my room and read it; the contents were, "Mr. Layer is come to town, and would be very glad to see you: no more, but your humble servant, William Jeffreys." By this I knew his name.

Att. Gen. By this letter he told you Mr. Layer would be glad to see you; did you go to him?

Plun. Yes, I went to him.

Att. Gen. Where? To his own house?

Plun. Yes, to his own house.

Att. Gen. What passed between you and Mr. Layer at that time?

Plun. I remember at that time, when I came to him, he gave me a guinea with his own hand.

Att. Gen. Who gave it you?

Plunkett. Mr. Layer, after he came from the country, gave it me, and I recommended Mr. Child to him.

Serj. *Pengelly.* When you recommended Mr. Child, what did Layer say?

Plunkett. He said he had no business for him.

Serj. *Pengelly.* For what purpose was Child recommended to Mr. Layer?

Plunkett. I recommended him as an honest man, as one that was well-affected as he desired me.

Serj. *Pengelly.* Upon what account did you recommend him?

Plunkett. Upon the account to be a Pretender's man.

Serj. *Pengelly.* Did you ever receive any money to give to Child?

Plunkett. I received half-a-guinea from Mr. Layer to give to Mr. Child.

Serj. *Pengelly.* For what purpose was it?

Plunkett. For to encourage him in the service, to be trusty to him, and to be a Pretender's man.

Serj. *Pengelly.* By what name did he call the Pretender?

Plunkett. He called him the king.

Serj. *Pengelly.* Had you any talk with him any other time?

Plunkett. The Sunday before he was taken up I was with him, and he was talking and saying, the king was as fine a shooter as any in Europe.

Serj. *Pengelly.* Whom did he mean by the king?

Plunkett. The Pretender, that he was as fine a shooter as any in Europe; he shot 19 out of 20: I said, that was fine shooting.

Att. Gen. Where was this discourse?

Plunkett. In his own parlour.

Att. Gen. Can you recollect any other discourse there was at that time, besides that of shooting?

Plunkett. Yes, there was; we talked of those men that would do service. I asked him what rewards those men, that would do service for their king and country, should have; he told me, that they, and their families, were to be for ever taken care of.

Serj. *Pengelly.* Was there any other promise made to you?

Plunkett. There was no promise; only he was the man who said, if I would follow his directions, he would promote me; that he would engage to do great matters for me; and what I suffered in the army, he would make me amends for.

Serj. *Pengelly.* Had you any discourse about the disposition of the nation?

Plunkett. He said, that most of the nation was tired with the present government; and he said that king George was for ruining of the nation.

Serj. *Pengelly.* Had you any talk of any persons at court?

Plunkett. Yes; he said, what signified the government; there were but only eight or nine upstarts that belonged to king George's court; that the ancient peers of the realm would not be run down; for they should be made slaves, if they did not prevent it.

Serj. *Pengelly.* Had you any discourse any other time about the Dutch or the French?

Plunkett. Yes; I do remember that he said, Here is a Dutch army come in upon this nation, and then the French army will come in, and take our rights and liberties from us: you will keep a Dutch army, and it will be to make a war among ourselves.

Serj. *Cheshire.* What would he have to cure all this?

Plunkett. He told me, that when the insurrection was, there would be a great many half-pay officers as I knew, that would be on the Pretender's side, and especially those of the names of Fitzgerald; but I never knew any Fitzgerald abroad.

Att. Gen. We have done examining this witness.

Prisoner. You say your first acquaintance with me was in Queen-street, and that major Barnewell desired you to assist me, there being an execution in my house: was it not so?

Plunkett. Yes.

Prisoner. At the same time you called me counsellor Layer?

Plunkett. Yes; I came to your house.

Prisoner. Did I employ you?

Plunkett. Major Barnewell sent me to get a couple of grenadiers, and you ordered your clerk to let them in at the back-door; and the two grenadiers, which were confined in the Savoy afterwards for it, drove the officers out.

Prisoner. Was it the landlord of the house's goods, or my goods?

Plunkett. I cannot tell; how should I know whether they were yours, or his? they were in your house.

Prisoner. You said it was about five years before I saw you in Lincoln-inn-fields?

Plunkett. It was when the army was broke; and I came over from Ireland.

Prisoner. Well, you say five years afterwards I met you in Lincoln's-inn-fields, and gave you half-a-crown to drink. I told you my lord North and Grey was to be general: that my lord Strafford was concerned in it?

Plunkett. No, you told me they were promoters of it.

Prisoner. Promoters of what?

Plunkett. Of this conspiracy.

Prisoner. So you did not know me? nor I did not know you?

Plunkett. Yes, you knew me; therefore, Sir, said I, you have an advantage against me; for I don't know you. Afterwards we met one another by accident: Says you, Don't tell Plunkett you met me.

Prisoner. What Plunkett?

Plunkett. James Plunkett.

Prisoner. Where lives James Plunkett?

Plunkett. I don't know: however that's not material.

Prisoner. Did not you come to my house some time after this, and desire me to lend you 13*s.* upon account of being bail in an action in the Marshal's court?

Plunkett. That was two months after; there was a soldier which was arrested by a Marshal's Court writ.

Prisoner. And I lent you 13*s.* in order to discharge him?—*Plunkett.* Yes, you did.

Prisoner. Did not you afterwards ask me for some money on account of sir Daniel Carrol?—*Plunkett.* No.

Prisoner. Did not you make a demand on sir Daniel?

Plunkett. No: I told you my affairs with sir Daniel. You said you would not meddle yourself, but you would write to him.

Prisoner. Did you not bring a paper, and say, sir Daniel had agreed to pay you 20*l.* when he received his pay?

Plunkett. No: I brought no papers to you.

Prisoner. Did not you tell me, it would be the greatest kindness in the world to you to advance 20*s.* for you?

Plunkett. I never asked you in the course of my life.

Prisoner. Did you never borrow any money of me?

Plunkett. No; I never borrowed any money of you, otherwise than to get men listed for the Pretender.

Prisoner. I shall shew that you are a little mistaken by and bye.

Mr. Hungerford. You said you was decoyed to church?

Plunkett. Decoyed! I said it was out of my way, when my own parish church was nearer.

Mr. Hungerford. What, do you use to go to church?—*Plunkett.* Yes.

Mr. Ketelbey. You say, the first time you saw this James Plunkett, he came to you when your wife was in the room?

Plunkett. The first time I saw him, was when Mr. Layer released major Barnewell out of the Marshalsea.

Mr. Ketelbey. When James Plunkett came to your house, he took you by the arm, and told you, he came from Mr. Layer; did he tell you that first time, he came from Mr. Layer?

Plunkett. Upon my oath he did.

Mr. Ketelbey. What discourse had you the first time? Did he only ask you to go and meet Mr. Layer?

Plunkett. He came to me, and desired me to meet Mr. Layer at the Italian coffee-house in Russel-court.

Mr. Ketelbey. Did James Plunkett talk to you about listing men for the Pretender the first time he saw you?

Plunkett. No; he only was sent on an errand from Mr. Layer.

Mr. Ketelbey. And then you came to the non-juring parson: the un-juring parson, as you call him: What discourse had you with him?

Plunkett. The same discourse passed between us about listing men.

Mr. Ketelbey. What, the first time you saw James Plunkett, and the first time you saw the non-juring parson?

Plunkett. Because he came from Mr. Layer.

Mr. Ketelbey. So you trusted both of them at first sight, and talked to them about listing men for the Pretender?

Plunkett. Yes, both talked to me.

Mr. Ketelbey. How many times had this un-juring parson been with you, before you knew his name?

Plunkett. He had been with me two or three times; he told me his name was Jeffreys, but did not tell me his Christian name.

L. C. J. Did he tell you his name was Jeffreys the first time?

Plunkett. He told me his name was Jeffreys.

L. C. J. How long after was it that this letter was sent to you by Mr. Jeffreys?

Plunkett. It was the time when Mr. Layer came from the country.

L. C. J. How long ago was that?

Plunkett. I believe about ten months ago: I mean ten weeks ago.

Mr. Ketelbey. I would not surprize you; I would have you consider you are upon your oath: Is it ten months, or ten weeks?

Plunkett. Ten weeks.

Mr. Ketelbey. How came you to remember the contents of the letter so exactly?

Plunkett. I heard it repeated over.

Mr. Ketelbey. Pray repeat it over again.

Plunkett. "Mr. Plunkett, Mr. Layer is come to town; I should be very glad to see you:

"So I rest your humble servant,

"W. JEFFREYS."

Mr. Ketelbey. Where is that letter?

Plunkett. I don't know; the letter is lost.

Mr. Ketelbey. Do you remember how long it is since this letter was lost?

Plunkett. Why, I missed it about two months ago, or more.

Mr. Ketelbey. Two months ago, or more! How long was it after you received it that you missed it?—*Plunkett.* I kept the letter in my pocket some time.

Mr. Ketelbey. How long?

Plunkett. I believe I had it three weeks.

Mr. Ketelbey. So that it is ten weeks since you received this letter, two months since you lost it; you kept it in your pocket three weeks: You can read writing?

Plunkett. No, I cannot.

Mr. Ketelbey. What, not read writing?

Plunkett. No, Sir.

Mr. Ketelbey. How can you be so particular as to the writing?

Plunkett. I have heard it read often enough.

Mr. Ketelbey. Who read it to you?

Plunkett. John Child read it over to me two or three times.

Mr. Ketelbey. Why, this is mere romance, that at twice hearing it read, you can remember it, the very words.

Plunkett. I can remember those words to the best of my knowledge.

Mr. Hungerford. How can he tell, when he cannot read at all? There is nothing in it: If one was to ask him, whether you can recite the Articles of the Creed, I believe he could not do it; and yet is so exact in repeating the words of this letter.

Prisoner. What countryman are you?

Plunkett. An Irishman: You knew that long ago; you need not ask me that question now.

Serj. *Pengelly.* My lord, we shall now proceed, and produce the plan of this conspiracy, which was found among the papers taken in Mrs. Mason's possession; and shall shew how they came to be in Mrs. Mason's possession; and we shall prove this plan to be Mr. Layer's own hand-writing.

John Turner, one of the Messengers, sworn.

Att. Gen. Look upon these papers. [Turner looks upon the papers.]

Att. Gen. Do you know any thing of those papers, and where they were found?

Turner. My lord, by warrant from my lord Carteret, principal secretary of state, dated the 29th of September last, I was directed to search for one Mrs. Mason and Mrs. Cook, and the very same day I executed that warrant. I found out Mrs. Cook's house in Stone Cutter's yard, in Little Queen-street, near Lincoln's-inn-fields, and in searching the house——

Serj. *Pengelly.* Who lodged there?

Turner. One Mrs. Mason lodged there: I found her in the house; and in her lodging there was a trunk, and being demanded to open the trunk——

L. C. J. Was your warrant to search for both Mrs. Mason and Mrs. Cook?

Turner. For both; and in Mrs. Mason's lodgings there was a trunk, which the other messenger and I demanded to be opened: She opened the trunk, and in the trunk there were two bundles of papers sealed up; which papers being opened, this paper was found amongst them. (Meaning the Plan or Scheme.)

Serj. *Pengelly.* Look upon it: How do you know that to be the same?

Turner. I know it to be the same, because I writ upon it; I set my mark upon it.

Att. Gen. You say that these papers were found in the trunk, in two bundles sealed up?

Turner. Yes.

Att. Gen. (Shewing the witness another paper.) Look upon that; see if that was in the same bundle with that you last gave an account of?

Turner. Yes, that was in the same bundle.

[And so he was examined as to several particular papers, which he swore to have been all found in the two bundles taken out of Mrs. Mason's trunk, and that he had set his mark upon them.]

Mr. *Ketelbey.* I beg leave to ask Mr. Turner a question or two. Mr. Turner, I think you give a positive account of several papers, what they are I know not; of several papers handed to you from Mr. Paxton? You had a warrant to search for Mrs. Cook and Mrs. Mason, and in a trunk you found these papers sealed up in a bundle?

L. C. J. He said he had directions from my lord Carteret to search for Mrs. Cook and Mrs. Mason. That he searched Mrs. Cook's house, and found Mrs. Mason there; he sees a trunk in the house, in Mrs. Mason's lodgings, and he demanded the trunk to be opened, and in the trunk is found two bundles of papers; in these bundles are these papers which have been shewn to the witness. When he is asked how he knew them to be the same that were in the bundle; he says, he knows them to be the same, because he set his mark upon them.

Just. *Fortescue Aland.* Were the bundles sealed up?—*Turner.* Yes, my lord, they were sealed up when we took them out of the trunk.

Att. Gen. In whose lodgings were they found?

Turner. At Mrs. Mason's lodgings, in her bedchamber.

Mr. *Ketelbey.* You say these papers handed to you, you found in the trunk in Mrs. Mason's lodgings. Where have they been ever since? How come you to be so positive that these individual papers are the same papers that you found in Mrs. Mason's room?

Turner. I put my name upon them?

Mr. *Ketelbey.* Is your name put upon those?

Turner. Yes, upon each of them at that time.

Mr. *Ketelbey.* How long were they in your custody?—*Turner.* About an hour.

Mr. *Ketelbey.* Who did you deliver them to, when you parted with them?

Turner. I think, to Mr. Stanyan.

Mr. *Ketelbey.* I ask you, when you put your name on each of them, was it before you first parted with them?

Turner. After the trunk was open, and the bundles were opened; in the bundles finding papers of consequence, I was directed to go and fetch Mr. Stanyan as being a magistrate, to give that person her oath. While I was gone, I delivered the papers into my brother messenger's hand, and he signed them.

Mr. *Ketelbey.* So you only swear for your brother messenger. How long after your first seizing the papers was it before you put your name upon them?

Turner. I believe three quarters of an hour.

Mr. *Ketelbey.* Who had you left them with?

Turner. I left them with this man, my brother messenger.

Mr. *Ketelbey.* You left them with your brother messenger before you set your mark upon them; how comes it that you are sure they are the same? How can you swear they are the same, when you went away and left them in your brother messenger's hands, and did not set your name upon them, till you returned?

Sol. Gen. You say these papers were seized in Mrs. Mason's lodgings, and that she was by, and unlocked the trunk, and you took out the two bundles?—*Turner.* Yes.

Att. Gen. You say you delivered the same papers to this person here?

Turner. Yes, Sir.

Prisoner. Mr. Turner, in Mrs. Mason's lodgings you say you seized two bundles of papers sealed up?—*Turner.* Yes.

Prisoner. When Mrs. Mason had them locked up, were they then sealed up?

Turner. They were then sealed up.

Prisoner. Did not the seals appear to have been broke open?—*Turner.* No.

Prisoner. You saw two bundles?

Turner. Yes.

Prisoner. You saw this paper, and that, and all the papers taken out of the bundles. What bundle was this paper in? (Meaning the Plan or Scheme.)

Turner. This was in the same bundle.

Prisoner. Was there a small bundle, and a great bundle?

Turner. Yes, there were two bundles.

Prisoner. And this was out of one of the bundles?

Turner. Out of the small bundle.

Prisoner. Did you see them taken out of the bundle?—*Turner.* I can't say that.

Mr. *Hungerford.* If I observe that paper or bundle right, it is one that consists of several sheets of paper; I desire he may hold it in his hand, till we have done examining of him.

Mr. *Ketelbey.* Mr. Turner, that consists of more sheets than one; did you sign your name to each leaf, or only to the first and the last leaf of the book?

Turner. I signed my name to each sheet.

Edward Speare sworn.

Att. Gen. Mr. Speare, did you go with Mr. Turner to seize any papers at Mrs. Cook's house?—*Speare.* Yes, I did.

Att. Gen. Give an account of what you know of seizing any papers there.

Speare. My lord, by a warrant directed to us from my lord Carteret, Mr. Turner and I were to seize Mrs. Cook and Mrs. Mason; and searching Mrs. Cook's house, I found Mrs. Mason there. At Mrs. Cook's I found no papers in the first room; I proceeded into a second room, where there was a trunk, which I ordered to be opened, and I took two parcels out of it; one of them was sealed with three seals, which I looked at; they did not appear to have been opened and sealed up again. I opened them, and marked them.

Att. Gen. Who was by?

Speare. Mrs. Mason was.

Att. Gen. Was she there when you opened them?

Speare. She was by when they were opened.

Att. Gen. Look upon them, are they the same papers?

Speare. I have looked upon them, and know them to be the same.

Att. Gen. Are those the papers that were taken out of the trunk?

Speare. The very papers.

Att. Gen. In whose room were they taken?

Speare. In Mrs. Mason's room.

Serj. *Cheshire.* Were they ever out of your custody, till you marked them?

Speare. No, Sir.

Sol. Gen. During the time that Turner, your brother messenger, was gone for Mr. Stanyan, who had the custody of the papers?

Speare. I had the custody of them.

Sol. Gen. Were any of them taken away, or was there any alteration in, or addition to them, during that time?

Speare. No, Sir.

Serj. *Cheshire.* Do you remember that Mr. Turner set his name upon them?

Speare. Yes, he did.

L. C. J. How long after your brother messenger returned back to you, was it before you set your name upon them?

Speare. Immediately, my lord.

Mr. *Ketelbey.* How long did you stay in the place after the return of Turner?

Speare. I believe I might stay there an hour, or an hour and an half.

Mr. *Ketelbey.* When did you first part with the papers out of your custody?

Speare. I gave them to Mr. Stanyan.

Mr. *Ketelbey.* How long after you first seized those two bundles was it before Mr. Stanyan came to you?

Speare. I believe about half an hour, or three quarters of an hour.

Mr. *Ketelbey.* What, did you deliver them to Mr. Stanyan then?

Speare. After Mr. Turner and I had signed them, I delivered them to Mr. Stanyan.

Mr. *Ketelbey.* Was it not before you signed them?

Speare. No, upon my oath.

Mrs. *Elizabeth Mason* sworn.

Att. Gen. Mrs. Mason, give an account of what you know of these papers?

Mason. Mr. Layer left two parcels of papers with me; he told me they were of the value of 500*l.* He afterwards took them away from me; and afterwards brought them to me again.

Serj. *Cheshire.* You say, he delivered two bundles first?

Mason. No, he delivered only one, and that was the largest bundle: he told me it was of the value of 500*l.* and desired me to take care of it, and lock it up.

Serj. *Cheshire.* When was the lesser bundle delivered to you?

Mason. Some time after; and after that he took them away from me; and in four or five days time he brought them to me again: he took them away, and brought them to me again, and told me they were a few love-letters; and begged of me not to let Mrs. Cook know it, for she would make a disturbance, and tell his wife.

Serj. *Cheshire.* When had you the lesser bundle?

Mason. I had that some time after.

Serj. *Cheshire.* What directions had you with the little bundle?

Mason. He desired me to take the same care of that, as of the other.

Serj. *Cheshire.* Was that sealed up?

Mason. They were both sealed.

Serj. *Cheshire.* Where did you put them?

Mason. I put them into my trunk.

Serj. *Cheshire.* After this; you know when the messengers came?

Mason. Before that, he came one day in the afternoon to our house, and asked where I was? It was the beginning of Bartholomew-tide. I was not at home: he left a message for me, that I should bring those writings home. I carried them home.

Serj. *Cheshire.* Home! What do you mean by home?

Mason. Mr. Layer's own house: he left word, that he would be at home by eight o'clock that night. I was there about eight o'clock? I asked the maid where he was? She said, he was in the back parlour. I asked

her if any body was with him? She said, there were two gentlemen. Said I, tell your master that I am here.

L. C. J. You say the great bundle was taken from you again, and afterwards he brought the lesser bundle; and after this you received a message, or intimation, that you should bring home that bundle.

Mason. My lord, I had two bundles. He left word, that I should bring his papers home; for he staid at home till eight o'clock that night. I went to his house: and when I knocked at the door, the maid came to the door. I asked her if her master was within? She told me, yes; he was in the back-parlour; and that there was a gentleman or two with him. I desired her to go and tell her master that I was there. And he came out to me; and I gave him the writings; and he desired me to come again the next morning, which was on a Saturday, about eleven o'clock, for he was going out of town: and that I would come and take those writings again. Which accordingly I did. It was in the morning, at the time that the bell was ringing at Lincoln's-inn chapel, when I went to him, and he delivered me the papers again.

Sol. Gen. Can you recollect the day that he left word for you to come to him?

Mason. It was the beginning of Bartholomew-tide.

Sol. Gen. What day of the week was it?

Mason. It was on a Friday night that I went and carried them to his house.

Sol. Gen. And when was it that he desired you would come and call for them again?

Mason. It was the next morning at eleven o'clock, or near the matter, that I went to his house; and he gave me the writings again, and charged me to take care of them.

Serj. *Cheshire.* What was you to do with them?

Mason. To take care of them.

Serj. *Cheshire.* Did you meddle with them, or open them?

Mason. No, Sir: I put them in my trunk. They lay there all the time.

Serj. *Cheshire.* Were they there when the officers came?—*Mason.* Yes, Sir.

Serj. *Cheshire.* Was you there when the bundles were opened?—*Mason.* I was there.

Serj. *Cheshire.* Did you mark the papers yourself?—*Mason.* I did.

Serj. *Cheshire.* Look upon the papers, and see if you find your mark on those papers?

Mason. Yes, this is my mark.

Serj. *Cheshire.* Mr. Speare, you was present at the opening of them?

Speare. I was: They were sealed up when I opened them.

Serj. *Cheshire.* Did you put your name on them?

Speare. I did put my name on them.

Serj. *Cheshire.* Were they out of your custody before you put your name on them?

Speare. No; they were not.

Serj. *Cheshire.* Did Mr. Turner put his name to them?

Speare. He put his name to them before ever they were out of my custody.

Att. Gen. You have marked all those papers. You are sure those are the papers you took out of the trunk in Mrs. Mason's lodgings?

Speare. I am sure they are.

Att. Gen. Shew them to Mrs. Mason. Mrs. Mason, were those papers in the bundles that were delivered to you by Mr. Layer?

Mason. Yes, Sir, they were.

Att. Gen. You have marked those papers, have you not?—*Mason.* Yes, I have.

Sol. Gen. You say, you gave the bundles back to Mr. Layer on a Friday, about the beginning of Bartholomew-tide: Do you remember whether it was upon Bartholomew day or not?

Mason. Indeed, I don't know.

Sol. Gen. What did Mr. Layer say when you brought them to him again?

Mason. He only thanked me; and desired me to come the next day and take them from him again: Which I did.

Sol. Gen. Did he mention then that he was going out of town?

Mason. Yes; and it was about 11 o'clock on a Saturday morning that I went to him, and he delivered the papers to me again.

Mr. *Hungerford.* Can you write?

Mason. No.

Mr. *Hungerford.* Have you made the same mark on all those papers?

Mason. I was so frightened at that time, that I hardly knew what mark I made.

Mr. *Hungerford.* If you was frightened at that time, and did not know what mark you made, how can you be sure you know your mark again?

Mason. Yes, I can tell it very well.

Mr. *Hungerford.* When you say you was so frightened you did not know what mark you made?—*Mason.* Yes, sure I do.

Mr. *Hungerford.* Upon the oath you have taken, hath any body seen those papers before they were taken by the messengers; whether sir John Meeres, or his man Thomas hath seen them?—*Mason.* No.

Mr. *Ketelbey.* Nor his man Thomas?

Mason. No, nor his man Thomas.

Mr. *Ketelbey.* I ask you, can you write, or can you read writing?

Mason. I told you I can't.

Mr. *Ketelbey.* You only can make your mark?—*Mason.* No.

Mr. *Ketelbey.* Do you only make but one mark, or use several marks?

Mason. I make but one mark.

Mr. *Ketelbey.* Pray, make the mark you generally use. With submission, my lord, I desire she may have a pen and ink, to see if she can make the same mark again.

Mr. *Hungerford.* Surely we are regular in desiring that.

L. C. J. What you desire is proper. She says she knows them to be the same papers, because she hath set her mark upon them; they doubt whether she may mistake in her

mark, and desire she may make her mark again.

Mr. Ketelbey. My lord, we desire she may make her mark again.

Sol. Gen. We desire she may have a convenient place to do it in, and that she may sit down while she writes.

Mason. No, I can do it without. (A pen and ink and paper is given to her, and she sets her mark, an *E* and an *M*.)

Sol. Gen. Here are the letters *E* and *M* set to the papers produced: and though in this confusion she should not make her letters exactly like those, yet I apprehend that would weigh very little.

Att. Gen. My lord, I can't tell what they mean? this doth not depend——

Mr. Ketelbey. My lord, I desire to go on with our questions. I ask you——

L. C. J. (Having compared the letters made by Mrs. Mason in Court, with those on the papers) the character which she now writes is like what she writ on those papers, and so confirms her evidence.

Mr. Ketelbey. After the delivery of those two bundles to you by Mr. Layer, I ask you whether sir John Meeres's man Thomas ever saw those bundles opened?

Mason. No, he never was up in my room; there was no such familiarity between us.

Mr. Ketelbey. Did one Wilson ever see them?

Mason. No.

Mr. Ketelbey. Did ever you produce them to one Binks?—*Mason.* No.

Prisoner. No! nor did sir John Meeres's man Thomas never see them?

Mason. No, never upon my oath.

Mr. Ketelbey. Did you ever produce them sealed up? Did you ever let Thomas or William, or sir John Meeres himself see either of those bundles as they were sealed up?

Mason. No, they were in my trunk: I always kept them in my trunk, perhaps as I opened my trunk, they might see them lie in my trunk.

Mr. Ketelbey. Do you know one Mrs. Buda?

Mason. No; I don't know the name. I don't know one Mrs. Buda.

Prisoner. Did you ever know one Mrs. Herbert?

Mason. I know many of that name.

Prisoner. Did you ever go by that name?

Mason. No.

Prisoner. Did you ever go by the name of Corbet?—*Mason.* No.

Prisoner. Did you ever go by the name of Bevan?

Mason. No, I never did go by the name of Bevan.

L. C. J. Mr. Ketelbey, I don't know what the meaning of this examination is; when it appears beyond contradiction, that this woman was an acquaintance of your client's.

Mr. Ketelbey. My lord, if we prove her to be an ill woman, I hope it will take off her credit, so that her evidence will not weigh with your lordship or the jury.

L. C. J. At the time when these bundles were seized, had they Mr. Layer's seal upon them?

Mason. Yes; the seal of Mr. Layer was upon them.

L. C. J. What says the messenger? At the time that you seized these two bundles of papers, was there any seal upon them?

Messenger. There were three seals upon one, and some seals upon the other; the seal was something of a small head.

L. C. J. What is Mr. Layer's seal?

Mason. Something of a head, but I cannot tell what head.

Mr. Ketelbey. Do you know Mr. Layer's seal?

Mason. It is something of a head.

Mr. Ketelbey. Was it the representation of a man's head, or the head of a beast?

Mason. It is a head with something of a ruff about it.

L. C. J. Mrs. Mason, look upon the head? Is that head the seal of Mr. Layer?

Mason. Yes: Upon my oath it is.

L. C. J. What says the messenger: Was that seal of a head upon them, when you seized them?—*Messenger.* Yes, it was.

Mr. Ketelbey. Before that time that the two messengers came, Mr. Turner and Mr. Speare, and seized the papers, and afterwards one of them went for Mr. Stanyan; I ask you whether you had shewn those bundles to any body before that time?

Mason. No; I had shewed them to nobody.

Att. Gen. She hath said so two or three times before.

L. C. J. Indeed, Mr. Ketelbey, we must direct you not to spend the time of the Court so. You have asked her that question two or three times over.

Mr. Ketelbey. My lord, I would very fain have the truth come out.

Mr. Hungerford. I will ask you a question or two. What trade or business do you follow? What is your trade or occupation?

Mason. What is that to you? I have no trade.

Mr. Hungerford. I should have asked you another question before; have you not a promise of reward for the service you do here, in giving this evidence?

Mason. No, I have not.

Prisoner. Nor you have received none?

Mason. No: You are an unjust man.

L. C. J. Are you promised any reward? Why don't you ask her whether she is to swear for hire? Is that a proper question to ask a witness?

Mr. Ketelbey. I submit it to your lordship, whether it is not proper to ask her this question; Whether she hath not told any person, and whom, that she was to have a reward for coming hither?

Prisoner. The question is, whether she hath never owned and confessed to any body, that these papers were opened before a friend of hers, before the messenger seized them?

Mason. No, my lord, I never did. I never opened them before any body.

Att. Gen. They have asked you what names you went by; do you know what names the prisoner at the bar has gone by?

Mason. He had once given me orders, that if any letter came directed in the name of Fountaine, that I should take it in; accordingly in two or three days time, there came a letter, directed to Mr. Fountaine, and I took it in; and when he came I gave it to him, and he opened it, and read it.

Prisoner. Where is your house?

Mason. Where! Where you left the writings.

Prisoner. How can you tell how that letter was directed which you took in, since you say you cannot read?

Mason. It was directed to Mr. Fountaine.

Prisoner. Did you read the superscription?

Mason. No; Mrs. Cook did.

L. C. J. You say you was desired by Mr. Layer, when any letter came directed to Mr. Fountaine, to take it in; and that a letter came directed to Mr. Fountaine, and you took it in; the question is asked you, since you cannot read, How could you tell it was directed to Mr. Fountaine?

Mason. My landlady told me it was for Mr. Fountaine, and she knew he went by the name of Fountaine sometimes.

Prisoner. She said she read it.

Mason. No; I said I gave it to you, and you opened it, and you read it.

L. C. J. The occasion of this question is, that this misnomer was approved of by you. She says, that you ordered her, that if any letter came directed to Mr. Fountaine, she should take it in; a letter did come directed so, she took it in, and then delivered it to you; and you received it from her, and opened and read it; but how, say they, could you know this letter was directed to Mr. Fountaine, when you can neither write nor read? She having received such an order, when there was a letter come it was natural enough, that she that could not read, should ask her landlady the directions of the letter, and it was directed for Fountainet; it was natural enough for her to take it in, and give it to you. Who brought the letter?

Mason. A porter.

L. C. J. Did he say from whence he came?

Mason. He told me he came from the Ditch-side, and asked me if Mr. Fountaine lodged there.

Mr. *Hungerford.* This trunk that the papers were in, did it use to be kept open, or was it locked up?

Mason. It was always locked up.

Mr. *Doyley* sworn.

Att. Gen. Mr. Doyley, do you know Mr. Layer? and how long have you known him?

Doyley. I have known him about seventeen or eighteen years; he was my clerk; it is thereabouts, I believe.

Att. Gen. Do you know his writing?

Doyley. I believe I do.

Att. Gen. Look upon that paper. (He is shewn the scheme.)

Att. Gen. Do you take that to be his hand?

Doyley. If you ask me as to my belief, I believe it is.

Att. Gen. Have you often seen him write?

Doyley. Yes, Sir.

Att. Gen. Have you seen him write since he left your service?

Doyley. I have had several letters from him since he was my clerk.

Att. Gen. Look upon that paper; can you swear that you believe that is his hand-writing?

Doyley. I have seen the paper before, and I do believe it to be his hand-writing.

Prisoner. Have you seen me write any thing but my name these 14 years?

Doyley. I cannot particularly recollect whether I have or no.

Prisoner. How long is it since I was your clerk?—*Doyley.* About 14 or 15 years.

Prisoner. Have you seen me write since?

Doyley. I cannot say I have, or I have not.

L. C. J. How long is it since you received any letters from him?

Doyley. About five years ago.

L. C J. How do you know those letters came from him?

Doyley. Because he was my client, and writ to me about business; and I answered those letters, and did the business that he desired me to do by those letters.

L. C. J. Did he pay you for that business done?

Doyley. Yes, very honourably.

Prisoner. You say you don't remember you have seen me write since I came from you; as to that paper which you say you believe to be my hand, have you compared it with those letters?—*Doyley.* I have.

Prisoner. Is that what you found your belief upon?

Doyley. This is what I chiefly found my belief upon.

Prisoner. Consider, Mr. Doyley, my life is at stake, and you say you have not seen me write these 14 years?

Doyley. I don't know that I have.

Prisoner. Have you any of my letters in court?

Doyley. I have not your letters in court.

Prisoner. You say you found your belief only by comparison of those letters. Now I wish you had brought those letters here.

Att. Gen. He doth not say so.

Doyley. If you had desired it, I could have brought them.

Prisoner. I desired it! I little thought to have seen you here on such an occasion.

Att. Gen. Mr. Doyley, I ask you, if you had no dealings with him since he was out of his clerkship?

Doyley. Yes, I was his agent.*

* See Leach's Hawkins's Pl. of the Crown, book 2, c. 46, s. 55.

L. C. J. Whose name is subscribed to those letters?—*Doyley.* Christopher Layer's.

L. C. J. You did the business mentioned in those letters; and he honourably paid you for it?—*Doyley.* Yes, my lord.

L. C. J. I suppose, in your time, that you will shew that other people writ letters in your name?

Mr. *Ketelbey.* You say, you believe that paper to be Mr. Layer's handwriting. And if I did not misunderstand you, I took it down in writing, you founded your belief on the comparing that writing with the letters which you received?

Doyley. I said, I chiefly founded my belief upon such comparison of hands.

Mr. *Ketelbey.* That you chiefly did so; and you have not those letters here in court, on which you chiefly founded this belief.

Sol. Gen. Mr. Doyley, I think you say you have seen him write several times?

Doyley. I do not remember that I have seen him write these 14 years.

Sol. Gen. During the time he was your clerk, you have seen him write?

Doyley. Yes; he was but two years with me: he had been clerk with Mr. ——— before.

Sol. Gen. Then he had been used to business before he came to you; and had formed his hand.

Mr. *Hungerford.* How old was he when he was your clerk?

Doyley. Indeed I don't know.

Mr. *Hungerford.* You form your belief upon the remembrance you have of what was his hand-writing 14 or 15 years ago?

L. C. J. You say, you received letters subscribed by his name five years ago?

Doyley. Yes, my lord.

L. C. J. Was the character of those letters that you received five years ago, agreeable to the characters that he writ when he was your clerk?—*Doyley.* Yes, my lord.

L. C. J. Then I ask you upon the whole, whether you believe it to be his hand-writing, or not?

Doyley. Yes, I do believe it to be his hand.

Prisoner. Since my unhappy circumstances, have you had no promise of being restored to your place again, or the promise of some other office or place?

Doyley. No; I never, to my knowledge, have seen one man that had the power to put me in my place again; nor ever conversed with any one great man upon that or any such affair.

Serj. *Pengelly.* We think we are entitled to read it: however, that there may be no dispute, we desire to call Mr. Delafaye and Mr. Stanyan, in whose presence the prisoner at the bar confessed it to be his hand-writing.*

Mr. *Delafaye* sworn.

* See Leach's Hawkins's Pl. of the Crown, book 2, c. 46, s. 55.

Serj. *Pengelly.* Sir, was that paper shewn to the prisoner at the bar?

Delafaye. I was not near enough when he was before the lords of the council, to see what was on the table; neither did I look upon the table, to see whether this paper was on it or not. But upon a question that was asked him relating to some arms, if he knew where any were lodged in such a place, he said no: upon which, one of the lords of the council held up a paper; it might be this, for aught I know; and said, Here is your own paper, your own hand-writing, which says, 'arms that are there lodged;' says he, I should have writ 'arms that should be there lodged.'

L. C. J. Whether is that the paper or no; and did he own that paper that was then shewn to be his?

Delafaye. The question was not asked, Is this your paper and your hand-writing? But it was shewn to him as such; and he said, I should have wrote 'arms that should be there lodged.'

Mr. *Stanyan* sworn.

Att. Gen. Mr. Stanyan, do you remember whether this paper was shewn to the prisoner at the bar, or any questions asked him about it, when he was before the lords of the council?

Stanyan. Upon the question that was asked him about the arms, this paper was shewn him; I think this is the paper: I was nearer to the table than Mr. Delafaye, and did observe this paper to lie upon the table before the lords, and do take this to be the individual paper that was shewn him then.

Att. Gen. What was said to him at that time?

Stanyan. The question was asked him, what he knew of any arms that were lodged in Westminster? He said he knew of none. Then this paper was shewn to him, and a question was asked him; here the arms are said to be lodged in this scheme of your own hand-writing; how came you to write so, if there be no arms lodged? Mr. Layer said, it was a mistake: it was not intended arms that are there lodged, but arms that should be there lodged. He said, I should have writ arms that should be lodged, instead of arms that are lodged.

Serj. *Cheshire.* The question was concerning a paper of his own hand-writing?

Stanyan. Yes; it was concluded, that the paper was of his own hand-writing, and he did not deny it.

Att. Gen. Did he say it was not his own hand-writing?—*Stanyan.* No, he did not.

Mr. *Ketelbey.* Was the question asked, whether that paper was his hand-writing, or no?

Stanyan. No, I believe not.

Mr. *Ketelbey.* Then if there was no question asked, whether did he own it to be his hand-writing, or no?

Stanyan. He did not expressly own it to be his hand-writing.

Att. Gen. He was not asked that question, whether it was his hand-writing, or no?

Mason. No, my lord, I never did. I never opened them before any body.

Att. Gen. They have asked you what names you went by; do you know what names the prisoner at the bar has gone by?

Mason. He had once given me orders, that if any letter came directed in the name of Fountaine, that I should take it in; accordingly in two or three days time, there came a letter, directed to Mr. Fountaine, and I took it in; and when he came I gave it to him, and he opened it, and read it.

Prisoner. Where is your house?

Mason. Where! Where you left the writings.

Prisoner. How can you tell how that letter was directed which you took in, since you say you cannot read?

Mason. It was directed to Mr. Fountaine.

Prisoner. Did you read the superscription?

Mason. No; Mrs. Cook did.

L. C. J. You say you was desired by Mr. Layer, when any letter came directed to Mr. Fountaine, to take it in; and that a letter came directed to Mr. Fountaine, and you took it in; the question is asked you, since you cannot read, How could you tell it was directed to Mr. Fountaine?

Mason. My landlady told me it was for Mr. Fountaine, and she knew he went by the name of Fountaine sometimes.

Prisoner. She said she read it.

Mason. No; I said I gave it to you, and you opened it, and you read it.

L. C. J. The occasion of this question is, that this misnomer was approved of by you. She says, that you ordered her, that if any letter came directed to Mr. Fountaine, she should take it in; a letter did come directed so, she took it in, and then delivered it to you; and you received it from her, and opened and read it; but how, say they, could you know this letter was directed to Mr. Fountaine, when you can neither write nor read? She having received such an order, when there was a letter come it was natural enough, that she that could not read, should ask her landlady the directions of the letter, and it was directed for Fountainet; it was natural enough for her to take it in, and give it to you. Who brought the letter?

Mason. A porter.

L. C. J. Did he say from whence he came?

Mason. He told me he came from the Ditch-side, and asked me if Mr. Fountaine lodged there.

Mr. *Hungerford.* This trunk that the papers were in, did it use to be kept open, or was it locked up?

Mason. It was always locked up.

Mr. *Doyley* sworn.

Att. Gen. Mr. Doyley, do you know Mr. Layer? and how long have you known him?

Doyley. I have known him about seventeen or eighteen years; he was my clerk; it is thereabouts, I believe.

Att. Gen. Do you know his writing?

Doyley. I believe I do.

Att. Gen. Look upon that paper. (He is shewn the scheme.)

Att. Gen. Do you take that to be his hand?

Doyley. If you ask me as to my belief, I believe it is.

Att. Gen. Have you often seen him write?

Doyley. Yes, Sir.

Att. Gen. Have you seen him write since he left your service?

Doyley. I have had several letters from him since he was my clerk.

Att. Gen. Look upon that paper; can you swear that you believe that is his hand-writing?

Doyley. I have seen the paper before, and I do believe it to be his hand-writing.

Prisoner. Have you seen me write any thing but my name these 14 years?

Doyley. I cannot particularly recollect whether I have or no.

Prisoner. How long is it since I was your clerk?—*Doyley.* About 14 or 15 years.

Prisoner. Have you seen me write since?

Doyley. I cannot say I have, or I have not.

L. C. J. How long is it since you received any letters from him?

Doyley. About five years ago.

L. C J. How do you know those letters came from him?

Doyley. Because he was my client, and writ to me about business; and I answered those letters, and did the business that he desired me to do by those letters.

L. C. J. Did he pay you for that business done?

Doyley. Yes, very honourably.

Prisoner. You say you don't remember you have seen me write since I came from you; as to that paper which you say you believe to be my hand, have you compared it with those letters?—*Doyley.* I have.

Prisoner. Is that what you found your belief upon?

Doyley. This is what I chiefly found my belief upon.

Prisoner. Consider, Mr. Doyley, my life is at stake, and you say you have not seen me write these 14 years?

Doyley. I don't know that I have.

Prisoner. Have you any of my letters in court?

Doyley. I have not your letters in court.

Prisoner. You say you found your belief only by comparison of those letters. Now I wish you had brought those letters here.

Att. Gen. He doth not say so.

Doyley. If you had desired it, I could have brought them.

Prisoner. I desired it! I little thought to have seen you here on such an occasion.

Att. Gen. Mr. Doyley, I ask you, if you had no dealings with him since he was out of his clerkship?

Doyley. Yes, I was his agent.*

* See Leach's Hawkins's Pl. of the Crown, book 2, c. 46, s. 55.

L. C. J. Whose name is subscribed to those letters?—*Doyley.* Christopher Layer's.

L. C. J. You did the business mentioned in those letters; and he honourably paid you for it?—*Doyley.* Yes, my lord.

L. C. J. I suppose, in your time, that you will shew that other people writ letters in your name?

Mr. Ketelbey. You say, you believe that paper to be Mr. Layer's handwriting. And if I did not misunderstand you, I took it down in writing, you founded your belief on the comparing that writing with the letters which you received?

Doyley. I said, I chiefly founded my belief upon such comparison of hands.

Mr. Ketelbey. That you chiefly did so; and you have not those letters here in court, on which you chiefly founded this belief.

Sol. Gen. Mr. Doyley, I think you say you have seen him write several times?

Doyley. I do not remember that I have seen him write these 14 years.

Sol. Gen. During the time he was your clerk, you have seen him write?

Doyley. Yes; he was but two years with me: he had been clerk with Mr. ——— before.

Sol. Gen. Then he had been used to business before he came to you; and had formed his hand.

Mr. Hungerford. How old was he when he was your clerk?

Doyley. Indeed I don't know.

Mr. Hungerford. You form your belief upon the remembrance you have of what was his hand-writing 14 or 15 years ago?

L. C. J. You say, you received letters subscribed by his name five years ago?

Doyley. Yes, my lord.

L. C. J. Was the character of those letters that you received five years ago, agreeable to the characters that he writ when he was your clerk?—*Doyley.* Yes, my lord.

L. C. J. Then I ask you upon the whole, whether you believe it to be his hand-writing, or not?

Doyley. Yes, I do believe it to be his hand.

Prisoner. Since my unhappy circumstances, have you had no promise of being restored to your place again, or the promise of some other office or place?

Doyley. No; I never, to my knowledge, have seen one man that had the power to put me in my place again; nor ever conversed with any one great man upon that or any such affair.

Serj. *Pengelly.* We think we are entitled to read it: however, that there may be no dispute, we desire to call Mr. Delafaye and Mr. Stanyan, in whose presence the prisoner at the bar confessed it to be his hand-writing.*

Mr. *Delafaye* sworn.

* See Leach's Hawkins's Pl. of the Crown, book 2, c. 46, s. 55.

Serj. *Pengelly.* Sir, was that paper shewn to the prisoner at the bar?

Delafaye. I was not near enough when he was before the lords of the council, to see what was on the table; neither did I look upon the table, to see whether this paper was on it or not. But upon a question that was asked him relating to some arms, if he knew where any were lodged in such a place, he said no: upon which, one of the lords of the council held up a paper; it might be this, for aught I know; and said, Here is your own paper, your own hand-writing, which says, 'arms that are there lodged;' says he, I should have writ 'arms that should be there lodged.'

L. C. J. Whether is that the paper or no; and did he own that paper that was then shewn to be his?

Delafaye. The question was not asked, Is this your paper and your hand-writing? But it was shewn to him as such; and he said, I should have wrote 'arms that should be there lodged.'

Mr. *Stanyan* sworn.

Att. Gen. Mr. Stanyan, do you remember whether this paper was shewn to the prisoner at the bar, or any questions asked him about it, when he was before the lords of the council?

Stanyan. Upon the question that was asked him about the arms, this paper was shewn him; I think this is the paper: I was nearer to the table than Mr. Delafaye, and did observe this paper to lie upon the table before the lords, and do take this to be the individual paper that was shewn him then.

Att. Gen. What was said to him at that time?

Stanyan. The question was asked him, what he knew of any arms that were lodged in Westminster? He said he knew of none. Then this paper was shewn to him, and a question was asked him; here the arms are said to be lodged in this scheme of your own hand-writing; how came you to write so, if there be no arms lodged? Mr. Layer said, it was a mistake: it was not intended arms that are there lodged, but arms that should be there lodged. He said, I should have writ arms that should be lodged, instead of arms that are lodged.

Serj. *Cheshire.* The question was concerning a paper of his own hand-writing?

Stanyan. Yes; it was concluded, that the paper was of his own hand-writing, and he did not deny it.

Att. Gen. Did he say it was not his own hand-writing?—*Stanyan.* No, he did not.

Mr. Ketelbey. Was the question asked, whether that paper was his hand-writing, or no?

Stanyan. No, I believe not.

Mr. Ketelbey. Then if there was no question asked, whether did he own it to be his hand-writing, or no?

Stanyan. He did not expressly own it to be his hand-writing.

Att. Gen. He was not asked that question, whether it was his hand-writing, or no?

Stanyan. No, Sir.

Serj. *Pengelly.* He did not deny it to be his own hand-writing?—*Stanyan.* No, Sir.

Mr. *West.* Whether the lords in their question did state it so as taking it for his own hand-writing?

Stanyan. It was taken for granted that it was so, and he made no offer to deny it.

Prisoner. Pray, Sir, let me ask you one question about the arms? When I was asked, if there were any arms lodged, did I not answer in the negative, and said, No?

Stanyan. Yes.

Prisoner. In relation to the arms, you say, that I said arms that should have been lodged?

Stanyan. That was upon the lords asking you, to explain that part of the scheme relating to arms; and when you said you knew of no arms that were lodged, then said they, How come you to mention in this scheme of your own hand-writing, arms that are lodged? To which you answered, I should have writ arms that should be lodged.

Prisoner. When I was asked, why I did say arms that were lodged? Why, saith I, my lords, I know of no arms. If that was my paper, and I had writ it, I should have writ arms that should be lodged.

Att. Gen. My lord, we pray that the papers may be read.

Mr. *Hungerford.* My lord, we hope that these papers, (though for my part I know not what they are; for there is no hint of them in my brief) shall not be read, for this reason; the evidence which hath been given for the king, hath not brought them home to the prisoner. There is no legal proof that the papers are of his hand-writing; and consequently he cannot be affected by any thing that is in them. As to what is said of the likeness of hands, that we humbly hope is no evidence at all.* The first witness, Mr. Doyley, he hath said it is like his hand; but he gives that opinion of his, on the knowledge he had of the prisoner's hand fourteen years ago; and by some letters he received from him about five years since; men's hands may differ and vary even in five, much more in fourteen years.

What follows is the evidence that hath been given by the gentlemen belonging to the secretaries' office.

I personally know them to be gentlemen of good sense, integrity and honour, and for my part I believe every word they say; which is more than I can say of the other witnesses hitherto produced. But what these say, doth not, with submission, affect the prisoner: they were present when the prisoner was examined before the lords of the council; none of them heard the prisoner acknowledge that the papers were writ by him, or that he did own them as his; neither was he asked any question to that purpose; neither did the nature of the examination my lords of the council were then upon, lead them to such a question: The lords were not asking Mr. Layer questions to fix an evidence upon himself. But the lords having some papers before them, and, according to the duty of their high stations, being intent upon discovering what might be of danger to his majesty and the public, they asked Mr. Layer, where the arms were deposited at Westminster? He answers, that he knew of none there, or to that purpose. It cannot in law or reason be from hence inferred, that he did own the papers to be of his own hand-writing. The only evidence, therefore, which can be insisted on to entitle these papers to be read, is the evidence of likeness of hand, which is no evidence at all in a criminal case.

In my lady Carr's case, it was not allowed to be evidence; and yet that was not a capital case, but a case of misdemeanor only, it was perjury. But there is an authority beyond all that; we have the act of parliament for the reversal of the attainder of colonel Sidney, who had been convicted upon evidence given of the similitude of hands, and that a much stronger proof than what appears here; for Cook and Cary, two famous goldsmiths, swore they believed the treasonable libel laid to colonel Sidney to be writ by him; and assigned that for a reason of their belief, for that they had received several bills from him of the like hand-writing, which they constantly paid. Nay, one of the goldsmiths swore, (as I remember the trial) that he saw the colonel write a receipt. Some other cases of this nature might be quoted, but we depend upon the authority of my lady Carr's case, and the act for reversing the attainder of colonel Sidney, which is *instar omnium;* for in that act the reason assigned for reversing the attainder is, for that the conviction and attainder were found upon a similitude of hands.* We have an attested copy of the act here ready to be read. In consequence of this act, my lord, similitude of hands is never to be given as evidence in a criminal case: and therefore we humbly hope, that this paper is not so proved, as to be read in any court, but must be rejected: it is not proved to be his hand by any that ever saw him write; neither hath any body heard him own it to be his.

Mr. *Ketelbey.* My lord, I beg leave to say a few words in support of this objection. We do not know what is the purport of this paper. I dare say, Mr. Hungerford, as well as myself, hath not seen one tittle relating to it whatsoever; but I hope, for the sake of evidence, the sacred and eternal rule of evidence, that similitude of hands shall not go for proof, where a person is charged with a capital offence. We shall in due time endeavour to lay before the Court several material objections to the credit of some of the witnesses; but at present we must suppose them unexceptionable, and consider, with respect to this single point, whether this paper is sufficiently proved to be his hand-

* See this Case cited as to this point in Dr. Hensey's Case, A. D. 1758, *infra.*

* As to Comparison of Hands, see vol. 9, p. 865, and vol. 12, p. 396.

writing, so as to be read. Mrs. Mason and the messengers have endeavoured, by a jumbling evidence, to prove the identity of the papers, and to hand them down from one to another: but how do they appear to be of the prisoner's hand-writing? Mr. Doyley says, fourteen or fifteen years ago he was his clerk; that five years ago he received letters from him; and that he chiefly founded his opinion that it was the prisoner's hand-writing, because he had compared it with those letters, and that the hands were alike: and yet those letters with which he compared this paper he hath not in court to produce. This is the substance of Doyley's evidence.

My lord, I humbly insist, that this is not sufficient; and if comparison of hands was to be evidence, surely this would not do, unless he produced those papers, on which he owns he founded his opinion. I refer it to the jury, whether he may not possibly, nay probably, make an erroneous judgment. Shall a man be believed out of his life, because the witness saw him write fifteen years ago, and received letters from him five years ago? Is any thing more changeable than a man's hand-writing? Can either of you, Gentlemen, take upon you to say, what is or is not your writing after so great a length of time? Would not the different subjects, the one a common letter of business, the other a treasonable scheme, make a sensible variation even in a man's usual character?

The case of my lady Carr is reported in Siderfin, fol. 419, and was upon an indictment of perjury, an offence of a much lower nature than what this gentleman is now tried for: There a witness swore he believed the paper produced in court to be her hand-writing, yet it did not amount to such a proof as to make her guilty: Nay, the Court said expressly, that it was not evidence, and should not be admitted; and accordingly she was acquitted. But the highest authority is what Mr. Hungerford hath named, the act of parliament for the reversal of the attainder of colonel Sidney; and we have a witness here ready, that examined it with the record, that proves it to be a true copy. Algernon Sidney was attainted of high-treason by similitude of hands, and that was the reason of the reversal.

The two next witnesses are Mr. Delafaye and Mr. Stanyan, gentlemen of honour, and that would not strain a point upon any account whatsoever. Mr. Delafaye doth not know whether this paper was on the table, when Mr. Layer was examined before the lords of the council, or no: Mr. Stanyan says, he was somewhat nearer the table, and he takes the paper that is now produced to be the same paper that was upon the table in the room before the lords of the council, when Mr. Layer was there; because when it was produced there, and shewn to him, he said, I should have wrote arms that should be lodged.

Mr. Stanyan owns, that he never was asked the question, whether it was his hand-writing or no? How then should he deny it, if it was never put to him? And therefore to say, because he did not deny a question that was never asked him, that that shall import, as to this particular matter, a confession, is to me strange and unaccountable! The natural sense of the prisoner's words, as proved, is no more than this: No, if I had writ it, I should have rather wrote arms that should be lodged, than arms that were lodged. Therefore, my lord, we humbly apprehend they have not given evidence in this case, sufficient evidence to support the reading of those papers.

Your lordships are now to lay down a perpetual rule of evidence: for latest posterity will pay a just regard to the present determinations; and if comparison of hands in this case be allowed as evidence, the same rule must for ever hold in all parallel cases; and God knows what may be the consequence of such a revolution, or who may be affected by it.

Serj. *Pengelly*. My lord, we hope that notwithstanding what hath been objected to the reading of this paper, we think it proper to have it read: though they have mentioned some cases for to maintain their objections, yet the latter authorities, and the constant course of evidence since, as we think, are directly with us: as the case of my lord Preston, where eight or nine of the judges were present.

In the case of the lady Carr, there is that opinion insisted on given at the end of the case in a short unintelligible manner.

(Here Mr. Hungerford interrupted.)

Mr. *Hungerford*. My lord, I do not know whether we shall be at liberty, when the king's counsel have done, to read the act; and therefore I offer it to your lordship's consideration, whether we should not read it now?

L. C. J. Read the act of parliament.

Mr. *Ketelbey*. Call Mr. Theedam.

Att. Gen. We are apprized of that act of parliament; I have an examined copy of that act; but we apprehend it will not come up to what they cite it for.

Mr. *Ketelbey*. We have five acts of parliament that we have examined with the records; we did not know where they would shoot at us, and therefore were resolved to be armed cap-a-pee.

Serj. *Pengelly*. As to my lady Carr's case, it will be hard to maintain that opinion, because the letters they produced were not in the direct instance of the perjury.

Even the act of parliament, which they produce, it takes notice, that a paper was found in the closet of Mr. Sidney, and was read, without proving it to be his own hand-writing: is this paper found without any owning and acknowledging it by the prisoner? Is not this paper delivered by Mr. Layer himself to Mrs. Mason? Had not he this paper in his custody, and it proceeded from him?

In the case of my lord Preston, there were a great number of judges, my lord chief justice Holt, lord chief justice Pollexfen, and others;

there the indictment of my lord Preston was his adhering to the king's enemies; and amongst other overt acts alleged, his carrying several papers of instructions to inform the French king how to attack the kingdom: Mr. Warer, who had been an under secretary to my lord Preston, swore, that he believed some of those papers to be like the lord Preston's hand, and they were all read in that case by the opinion of the whole court, though they were the very express overt acts alleged in the indictment itself: how doth this stand here, supposing no use is made of the evidence of Mr. Doyley? When this paper is shewn to Mr. Layer himself, before the lords of the council, and was mentioned as a paper of his own writing, and he is asked how he came to write arms that are said there to be lodged; his answer is, I should have wrote, arms that should be there lodged; is not this sufficient evidence to prove a confession? Doth not this amount to an evidence of his confessing it to be his own writing? So here is, as we apprehend, the evidence not only of the thing itself, but likewise the prisoner's own declaration, that he was the person who wrote it. In sir Henry Vane's case, the warrant given in evidence against him was proved only by witnesses who believed it to be his hand; but here is a particular fact which (we apprehend) amounts to a confession, and is a proper evidence for the jury to consider of, whether this be not a confession.

Att. Gen. My lord, I apprehend that we have given very proper evidence to entitle us to read this paper: my lord, I beg leave to observe first, that it hath been proved that this paper was found among the papers which the prisoner delivered to Mrs. Mason, to be kept for him, which were seized in her lodgings, as the witnesses have before acquainted your lordship, and if that were all, this paper must be read. As to that, the lord Preston's case is direct in point, and so determined by six or seven judges, viz. that papers found in the possession of the prisoner may be read without further proof. But we insist that this paper is legally and regularly proved to be his writing by the evidence of Mr. Doyley, and the prisoner's own confession: the counsel for the prisoner have mentioned lady Carr's case, and the act for the reversal of the attainder of col. Sidney, and say they have a great many other cases to the same purpose.

I defy them to shew any one single case, wherein it has been determined, that proof of a person's hand by a witness, who swears he has seen him write, and knows his hand, and believes the paper produced to be of his handwriting, is not a sufficient proof, in a criminal prosecution, that that paper is such a person's hand, before my lady Carr's case: if that case does support the opinion they have laid down: in all actions such evidence hath been constantly allowed; then I should be glad to know, what law or what reason has made a difference as to such evidence, between civil actions, and criminal or capital prosecutions. As to my lady Carr's case, the book is very dark and obscure; I believe the prisoner's counsel cannot make it support what they now contend for.

Lady Carr was indicted for perjury, supposed to be committed in an answer sworn by her before a master in chancery: what is there said about a letter, does not appear at all to relate to the case there; and if any judge did lay down such a position, as has been mentioned by the other side, the meaning must be, that an answer on oath shall not be falsified by a letter only under the party's hand; and that such a letter should not be a sufficient evidence to convict him of perjury.

As to the case of col. Sidney, it is very well known that he was a gentleman of quality, and in his study a writing was found, viz. A General Treatise of Doctrines and Positions, which were very distasteful to the then government, writ in answer to a book formerly published. It was not a scheme for raising a rebellion, nor was it designed, for any thing that appeared, that it should go out of his own closet, but his papers being seized, this paper was found there among them; and for this he was indicted of high-treason. It was generally thought extremely hard to make his having by him such a general tract, writ in answer to a particular book, and kept private in his closet, an overt-act of treason. However, he was found guilty, and attainted. No wonder then, when this came into parliament, that they resented this proceeding, and reversed his attainder. And the reasons recited in this act, as inducements for this reversal, are accumulative; every step taken in that proceeding is complained of, and there is not stress laid only upon the proof of this paper, but

The act recites, "That col. Sydney, by means of an illegal return of the jury, by denying him his lawful challenges to the jurymen, for want of freehold, and without sufficient legal evidence of any treasons committed by him, there being produced a paper found in his closet, supposed to be his handwriting, which was not proved by any one witness to be written by him; but the jury was directed to believe it by comparing it with other writings of his: and besides that paper so produced, there was but one witness to prove any matter against him, and by a partial and unjust construction of the statutes of treasons was most unjustly attainted." And then the act reverses the attainder. Surely, if the nature of the evidence we have given, to prove this paper to be the prisoner's hand, is considered, it stands clear of any material objection that can be raised from that act. This is not barely proved by a comparison of hands; here is a witness, that often saw him write, swears it to be his hand-writing: there was a multitude of papers, some offered to be proved by similitude of hands, and every one of them was read in my lord Preston's case.

Besides, here is that, which I beg leave to

insist upon, as a confession by Mr. Layer, that this paper was his writing; if the question proposed to the prisoner by the lords of the council and his answer are considered, it amounts to a plain confession of it; therefore we must insist on it, that we have given a sufficient evidence for the reading of this paper; and I hope we shall have your lordship's direction that it shall be read.

Here some other of the king's counsel offered to speak.

L. C. J. If there was any occasion, you should be heard; but there is no occasion.

It is proved by the witnesses that these papers were in Mr. Layer's possession, that he delivered them to Mrs. Mason, that she locked them up in her trunk, sealed as they were delivered to her by Mr. Layer, and afterward taken out of her trunk by the messengers, so that if they rest it here, and no other evidence had been given; the papers ought to be read, as being his papers, which he once had in his possession, if nothing else had been the case.

Can any thing in the world be an authority more express than that of my lord Preston, where all the papers which were in his custody, and taken out of his custody, were read without any offer of proof that they were his hand.

And then consider, this goes further; it is not only a paper found in his custody, but it is a paper written with his own hand! How do you prove that?

The master of this gentleman tells you he was his clerk, lived with him two years; afterwards he received letters from him about business, which business he did according to the direction of those letters, and was paid honourably by him for it, and that he believes it to be his hand. If they had gone no further, nobody could have doubted, but that according to the usual course and rule of evidence it ought to be read. Then they make an objection, and ask how long it is since he was his clerk? Why about 14 or 15 years ago: his hand may be altered in that time very much: therefore how can you swear it, when it is so long since, that it is his hand? Why, says he, because I have received letters from him five years ago; I dealt for him as his agent; this gentleman, Mr. Layer, was my client, he sent letters to me, and the characters of the letters I have compared with this paper, and from hence it is I believe that his character is not changed. How do you know he writ those letters? I answered those letters, and they were about business which I did for him, and afterwards he paid me very honourably for it; and therefore I believe they were his writing, and therefore I believe he hath not changed his character; and upon the whole matter, says he, I verily believe it to be his own handwriting. Consider, this is confirmed by his own confession; but if it had been an independent evidence, it is an evidence sufficient for to have had this paper read; because if a man says he verily believes it to be his handwriting, it is always allowed to be read. You did ask him, but upon what grounds do you believe his character is not changed? Why, says he, I do principally believe it from the letters I received from him, which I should have doubted on the hand, which he writ 14 years ago, whether it was changed or not; and I believe it is not changed, because it is agreeable with the characters he writ, when he was my clerk; and upon the whole, I believe it to be his hand-writing.

Then they tell you of an examination of this gentleman before the lords of the council; when they asked him about arms, he knew nothing of them; then they shew him this paper, and ask him, how came you in a scheme, all of your own hand-writing, to say, arms that are provided? What was more natural than for him to say, here is a paper that doth mention it, I deny it to be my hand-writing? But he was so far from denying it, that as the plain sense and import of the words spoken must be understood, he owns it to be his hand.

It is a mistake, says he, I should have writ which should have been provided.

How should he have writ that, if he had not writ the other?

So considering the whole contexture of the business, and course of proceeding, it is, and I believe none can doubt it, as plainly proved to be his own hand-writing, as if he had said in so many words, it is my hand-writing. It must have been read as a paper found in his custody. The other evidence, that is given to the jury, will be a matter proper for their consideration; but if that evidence had not been, they must have been read; they offer that as of greater import, because it is of the prisoner's own hand-writing.

You tell us of the lady Carr's case, which was an extraordinary case, when she in her answer in chancery swore that it was not her hand, they come to convict her of perjury, by proving it to be her hand by a letter they produced.

Gentlemen, there is no pretence to make this a question. Do you think that the paper which you offer shall convict this woman of perjury? No; when she had sworn it was not her hand, they come to prove it by a witness that says he believes it to be her hand, because they produce a letter, which they say is her hand. Upon this the Court determines that this evidence should not be allowed; that is, that it could be of no consequence to falsify any matter, which she had declared upon oath.

But as this case is, sure there is not the least doubt but if the proof of his hand had been out of the case, it must be read as a paper that was in his custody, and taken out of the custody of one, with whom he had deposited it, which is proved beyond all contradiction.

And in the case of my lord Preston, and in a thousand cases, it hath been so, and never was denied.

True, if they come and say, is this his hand?

them the watch-word, are to admit you into the park.

18. So here being two bodies of men thus gotten together the first night, viz. one on Tower-hill and the other in St. James's-park, (besides our friends at the artillery in Hyde-park.) The next morning, if not sooner, let our general order a detachment to Lincoln's-inn-fields, and some cannon to be placed on the terras of the garden there, lest the enemy come in there between St. James's-park and the city.

19. A proper captain must be appointed to head the watermen belonging to the Thames, and previous to the day of execution, he must agree with the duke's bargeman, that upon the least notice to be given them, that they alarm all the watermen, and bring them to a rendezvous the same hour of nine that night of execution, and this captain's rendezvous must be at Greenwich, where he must seize the magazine of powder, and take out such part of it as each man will carry, then blow up the rest; march from thence to the Tower, and join his men with the general there, to whom he must first send a messenger with the watch word, and an account of his numbers.

20. Some time before execution, the general to send a messenger to particular men in the country, that they rise in their respective counties upon the first news of what is done here.

21. An officer, &c. to go to Richmond, and at the exact hour of nine to seize upon prince Pritty Man, and bring him away to Southwark to some particular place appointed, where an agent from the general must meet them with his further orders.

Serj. *Pengelly.* We read this as an evidence that cannot be mistaken, which is all of his own hand-writing.

Att. Gen. My lord, we apprehend that this confirms what both the witnesses have sworn.

Serj. *Pengelly.* We shall now produce some receipts subscribed by the name of James R. and pray that they may be read, these were likewise among those papers, as hath been proved in the manner you have heard already.

Cl. of the Cr. reads one of them.

'I acknowledge to have received from
'the sum of which sum
'I promise to repay with an interest for it at the
'rate of per annum. JAMES *R.*'

L. C. J. They are not read as if proved, the hand is not proved, but as papers found on him.

Sol. Gen. In my lord Preston's case, his lordship was taken in the hold of a ship lying upon the ballast, and Ashton there near him, and between his lordship and Ashton was found lying also upon the ballast, a packet of papers which Ashton snatched up, and put into his bosom, from whence they were presently taken; two seals, which appeared to be my lord Preston's, when he was secretary of state, were found lying near to the papers. Upon this proof those papers were read as evidence against my lord Preston, without any proof made of their being his hand writing, in order to the reading of them.

Mr. *Hungerford.* My lord Preston was taken on board a ship going to France, then in war with England, these papers were found in the bosom of Mr. Ashton, who was going with him; my lord endeavoured, so far as he could, to throw them over-board: The offence did not turn upon the papers being writ by my lord Preston, or not; in my lord Preston's case the papers contained a discovery of the condition of the fleet and garrisons of England and France, in order to enable France to invade us; it signified nothing who writ the papers, the crime was the having them, knowing the contents of them, and endeavouring to carry them to France, so the circumstances of my lord Preston widely differ from this.

Mr. *Ketelbey.* I beg leave to mention another thing, there the papers were found in the custody of my lord Preston; here they were found in the custody of a third person, whose evidence we shall controvert by a number of witnesses, when it comes to our turn. I believe it will appear that some of the papers were found on the table in my lord Preston's case, and others taken out of his pocket.

Sol. Gen. No, they were first found lying on the ballast.

Mr. *Ketelbey.* What were found on Ashton, and taken out of his bosom, were seen lying on the ballast; but there were other papers seized at that time.

Sol. Gen. They were the same papers that were afterwards taken out of Ashton's bosom, which were read as evidence against my lord Preston upon the circumstances I have mentioned.

Mr. *Ketelbey.* As I remember, some of them were found on the table in the cabin.

Just. *Eyre.* No, they were on the ballast in the hold of the ship.

L. C. J. You say that they were found in my lord Preston's possession, and not in the possession of Ashton; you say my lord Preston had no counsel, but you know it is the duty of the Court not to suffer any thing to be read in evidence that ought not. You say you shall controvert this matter, and give an answer to it, and that it appears they were not in his custody, they were taken out of this witness's custody, and under his seal, and therefore the difference it makes is nothing at all. Besides, the proof in my lord Preston's case is not so strong as the proof of the scheme against the prisoner, because the scheme is proved to be his own hand writing, which was not in the case of my lord Preston.

Mr. *Ketelbey.* My lord, will not your lordship think it necessary that they give further evidence that they are his papers before they are read?

L. C. J. Read them.

Cl. of the Cr. "I acknowledge to have received," &c. here are ten of them, that are the same.

Serj. *Pengelly.* Mr. Stanyan, do you remember whether any questions were asked him with relation to those receipts?

Stanyan. What I recollect is this: upon the lords asking Mr. Layer the meaning of those receipts signed by the Pretender, and what use he made of them, he said, "that during the time he was at Rome, he had settled a correspondence with sir William Ellis, and some time afterwards he writ to sir William Ellis according to the directions he gave him, and he told him, if he could send any receipts signed by his majesty, or the king, as he called him, he thought money might be raised upon them for carrying on the cause," these were the words, as near as I can remember.

Att. Gen. Mr. Delafaye, was you by?

Mr. *Ketelbey.* It was for raising money to carry on his cause, you mean sir William Ellis's cause?—*Stanyan.* No, Sir.

Mr. *Hungerford.* He acknowledged to have received them from sir William Ellis?

Stanyan. Yes.

Mr. *Ketelbey.* You said he owned he had them from sir William Ellis, having settled a correspondence with him, that money might be raised by these to carry on his cause; he told you he had business to do for sir William Ellis?

Stanyan. No. I know nothing of sir William Ellis's business, but that he had appointed to correspond with sir William Ellis, and sir William Ellis gave him his address how to direct to him, and he acknowledged to have received a letter or letters from sir William Ellis, in the name of Jones, and that he writ to him in answer to them.

Mr. *Ketelbey.* Are you sure as to those words, or only to the purport of them?

Stanyan. I think they are near the words, but I am sure they are the purport of them.

Mr. *Ketelbey.* Was it reduced into writing?

Stanyan. It was reduced into writing in this manner. It was a very long examination, about four or five hours.

Mr. *Ketelbey.* I ask you, whether it was reduced into writing?

Stanyan. Yes, it was; the lords sent to me to assist Mr. Delafaye, upon Mr. Layer's being examined: Mr. Delafaye took the heads of the questions propounded: and I sat near the table, looked over Mr. Delafaye; attended to the questions and answers; so that we could set one another right when we came to consider them.

Mr. *Ketelbey.* This you wrote, was it read over to the prisoner?—*Stanyan.* No.

Mr. *Ketelbey.* Do you believe the prisoner at the bar saw you write?

Stanyan. Yes, I believe he saw us write.

Mr. *Ketelbey.* Do you believe he thought any person was taking his confession in writing?—*Stanyan.* I think it cannot be otherwise.

Mr. *Ketelbey.* I ask you, do you believe that Mr. Layer knew that you was taking his confession at that time?

Stanyan. The lords spoke thus; Pray, take notice, and then take down such a thing, and such a thing; and I believe Mr. Layer heard them say, Take down that, and take down that.

Mr. *Ketelbey.* Was it ever known for one to take down the questions, and the other the answers; and then to compare them together, in order to make a confession?

Stanyan. No; Mr. Delafaye wrote down the questions and answers.

Mr. *Hungerford.* How was the position of Mr. Layer, with respect to you; was your back or face towards him?

Stanyan. It was on one side.

Mr. *Hungerford.* Was you in the room when Mr. Layer came in first?

Stanyan. I was, I called on Mr. Layer by the lords' order.

Mr. *Hungerford.* Was it ever read to him?

Stanyan. No.

Mr. *Hungerford.* Was it drawn up in form, so that you might call it an examination?

Stanyan. I will tell you what we understood by it; it was the minutes of an examination to be drawn out in form: but the lords finding Mr. Layer not so candid and ingenuous as they thought he would have been, did not ask him to sign it; and we only make use of it to refresh our memories.

Mr. *Ketelbey.* He calls it an examination, and it appears by what Mr. Stanyan saith, that he and Mr. Delafaye took it; one takes one part, and the other takes another part.

Sol. Gen. He did not say any such thing.

Mr. *Ketelbey.* His confession was never read over to him.

Sol. Gen. Mr. Stanyan, when the lords directed Mr. Delafaye and you to write this or that particular thing, was the prisoner so near that in your apprehension he might hear their lordships give such directions?

Stanyan. Yes, he was.

Mr. *Hungerford.* Sure they are not contending, that any confession should affect a man, unless it was read to him, and it ought to be signed by him; my lord, the man is no way answerable for any thing taken in writing, without his consent or privity, in a criminal case: it is called minutes, or an examination, which they might enlarge as they please; therefore we humbly submit it to your lordship, whether it ought to be offered in evidence at all as a confession.

Mr. *Ketelbey.* What will be the consequence, if this be allowed here? Is a person to be convicted of treason upon a confession taken, without its being read to him, and without his signing it? A confession to a justice of peace in cases of felony, unless read to the party, and signed by him, must not be given in evidence.

L. C. J. Mr. Ketelbey, you seem to mistake what it is that is contended for by the king's counsel: they are not going to offer any thing to be read in evidence; your objection would prevail, if they were a going to read a confession as evidence, which was neither read to him, nor signed by him; but if there is no examination reduced into writing, and signed by the party, the consequence of that is, that the witness is at liberty to give an account of what

was said; and he may look to his notes to refresh his memory: if you will say, it is not so great an evidence, of so great weight, as an examination taken, and signed by the party, there is some room left, some foundation to suppose the evidence may be mistaken.

He says, he was examined before the lords of the council; and he took minutes of his examination: and afterwards to refresh himself, he looks upon them and says, he believes that is the substance of what he confessed at that time. You say, there is no precedent for it; for God's sake! recollect yourself, it is every day done at the Old Bailey: if a person confesseth, and it be not in writing, they do prove his confession, *viva voce*.

Sol. Gen. My lord, Coleman's case, which was during the time that sir William Jones was attorney general, went further than this: there his letters were laid in the indictment, as the very overt act of the high treason charged against him; and yet one of those letters was proved by his confession, upon an examination before a committee of the House of Lords; and that confession was proved, *viva voce*, by sir Philip Lloyd.

Mr. *Ketelbey*. Whether that case will be a precedent? I never heard it so reckoned.

Mr. *Hungerford*. And I hope it will never be one.

Mr. *Delafaye* sworn.

Serj. *Cheshire*. Mr. Delafaye, pray give an account what Mr. Layer declared before the lords of the council concerning these receipts.

Delafaye. The account he gave——

L. C. J. Mr. Delafaye, you was present at the time of taking this examination; you say you took minutes in writing; you have told us the reason why it was not in form, and read to Mr. Layer: if you have not already done it, you may look to your minutes, and refresh your memory: that which the Court demands of you is, what Mr. Layer did confess at the time of his examination before the lords of the council.

Delafaye. He told the lords, that he did write to sir William Ellis, that he would send over some blank receipts under the king's own hand, that might be made use of, for the carrying on this cause: that he did receive such receipts, and his intention was to have tried his friends, and to have raised money on those receipts.

Serj. *Cheshire*. Did he give any reason why he went into that method?

Delafaye. For a precedent, he said, a little before the restoration of king Charles 2, a method of this kind had been used.

Att. Gen. My lord, we shall now proceed to read the letters that were sent and passed between them, sir William Ellis and Mr. Layer: but it will be proper first to lay before you the cyphers which they made use of to explain several cant words and expressions, which they used in their letters.

L. C. J. Were the cyphers found among Mr. Layer's papers?

Att. Gen. Yes, my lord.

Serj. *Cheshire*. Pray read N°. 38.

Att. Gen. I don't know whether we shall trouble your lordship to read the whole cypher; it is very long; but when we meet with a word in the letters which wants explanation, we may have recourse to the cypher. Read the letter N°. 38.

Cl. of the Cr. reads. This letter is signed Eustace Jones, &c.

"Dear Sir;

"I received with a great deal of pleasure and satisfaction, a letter of the 24th of November, from my worthy friend, with an account of his safe arrival, of which I was in some doubt before, and in no small pain on that account: I easily conceive he must needs have had a great deal of business on his return, as well of his uncle's as of his own; and therefore, I don't think much that I heard no sooner from him, believing he was much better employed, and that business is to be preferred before compliment.

"I was entirely of his opinion as to the method of carrying on the manufactory; the procuring of good workmen, is the first step to be made, and if he can get such, the rest will be easy; and particularly if he could gain some of the ablest of Mrs. Barbara Smith's, I know it would be very agreeable to all concerned, and particularly to Mr. Atkins, to whom he spoke of writing; and which, I am satisfied, will be very acceptable: and if he thinks fit to inclose it to me, I shall convey it safely to his hands, who, I find, was very glad to hear of him, counts very much upon his friendship, and hopes for the continuance of it.

"I made his compliments to Mr. Timothy Watson's wife, who took them very kindly, and returns hers, with her most humble service. She and her charge are very well, God be praised, as are also all friends here.

"He having read over several times the paper I shewed him, and having a good memory, I don't think it necessary to send a copy of it.

"I am with great esteem and respect, ever most entirely, dear Sir, your most affectionate, most humble, and most obedient servant,

"Eustace Jones."

"January 30th. For James Fountaine, esq. to be left at Howell's coffee-house, in Great Wild-street, London."

Att. Gen. Your lordship is pleased to remember, Mr. Stanyan said, that sir William Ellis was to write by the name of Jones.

Stanyan. My lord, he did say, that he had received a letter since he had settled a correspondence with sir William Ellis subscribed by the name of Jones.

Att. Gen. In the cypher sir William Ellis is called Jones.

Cl. of the Cr. reads. This letter is signed Eustace Jones, dated 30th January, no year, "Dear Sir, I received," &c.

Att. Gen. Your lordship will be pleased to observe the expressions in this letter, the procuring good workmen: now look in the cypher, and 'soldiers' are meant by 'workmen;' 'manufactory' is not in the cyphers; but I don't know for what manufactory they wanted soldiers, unless to raise a rebellion. The ablest of Mrs. Barbara Smith's; look for 'army' in the cyphers, and you will find, that is signified by 'Barbara:' It will be very acceptable to all concerned, and particularly to Mr. Atkins; in the cypher that is the 'Pretender.' Compliments to Mr. Timothy Watson's wife; look in the cyphers, and 'Timothy' stands for 'Hughes,' whose wife is nurse to the Pretender's child. This letter is directed for James Fountaine, esq. to be left at Howell's coffee-house in Great Wild-street; and I observe, Mrs. Mason said, the prisoner went by the name of Fountaine. No. 10, are six fictitious names, and the key to them: Read it.

Cl. of the Cr. reads No. 10.

"Digby——Dillon.
Orrery——Burford.
Regent——Steel.
Tories——Tanners.
Whigs——Waggs.
Rogers——Plunkett."

Att. Gen. Read the letter No. 40.

Cl. of the Cr. reads. Signed N. C. dated the 11th of July, 1722.

"Dear Sir, 11*th of July*, 1722.

"I received with all possible satisfaction your most affectionate letter of 8th May, with its inclosed, which was presently delivered to Mr. St. John, who took it extreme kindly; but could not well understand what relates to Mr. Burford; he hopes your answer to what I writ in the beginning of last month, may soon clear that: you will have seen, by what I then told you, that the former came safe to his hands, and the reason of your not having had a distinct answer to it: he had the stockings you sent for him, and returns you many thanks for them; as also for all other marks of your affection and concern for him and his, and will be ready to shew his sense thereof on all occasions. I am in earnest expectation of hearing soon again from you, and am, with all possible affection and esteem, dear Sir, your most faithful and most humble servant, N. C."

"For James Fountaine, esq. to be left at Howell's coffee-house, in Great Wild-street, London."

L. C. J. Who is that N. C.?

Att. Gen. My lord, we do not know, it is directed to James Fountaine, esq. Mr. St. John in the cypher signifies the Pretender.

Sol. Gen. Mr. Burford appears to stand for my lord Orrery in the little cypher.

Mr. *Hungerford.* Look into the papers, pray, what do stockings stand for?

Sol. Gen. Read the letter No. 41.

Cl. of the Cr. This is dated the 27th May, it is signed by nobody, nor directed to any body; the cover is off; "I received with a great," &c.

"Dear Sir; *May* 27.

"I received with a great deal of pleasure, the favour of your most obliging letter of 22d March, with an inclosed for our friend, who was very glad to hear from you; and is very sensible of, and takes very kindly the care you take of his little concern there; but says, he doth not sufficiently understand the state you sent, so as to be able to make a particular answer, till you shall further explain it; there being some tenants, mentioned by you, whose names he does not find in the rental, as Burford, Steel, Digby, the little soldier, and Simmonds; the latter, he believes should be Simmes, he is of the North, a grey haired ancient man, whom he very well remembers, and has a particular esteem and value for, as a very good tenant, and a very honest man.

"All friends here are in perfect good health, God be thanked, and remember themselves kindly to you, and I am most entirely,

"Yours, &c."

Sol. Gen. If you look into the cypher you will find Rental stands as the fictitious name for the cypher itself; Burford stands for the lord Orrery, Steel for the Regent, and Digby for general Dillon. Simmons, he believes should be Simmes, but Simmonds in the large cypher is put for lord North and Grey, and who is meant, appears pretty plain from the cant which follows. "He is of the North, a grey haired ancient man, whom he well remembers, and hath a particular esteem and value for, as a very good tenant, and a very honest man."

Att. Gen. Look for Simmons in the cypher.

Mr. *Hungerford.* I can make one observation, that Mr. Harcourt is very ready at.

Cl. of the Cr. It is alphabeted, so that it is easy to look for it.

L. C. J. What use do you make of these letters?

Sol. Gen. The use we make of them is to shew that Mr. Layer, who took on him the sham-name of Fountaine, by which name some of these letters are addressed, had a correspondence with the friends of the Pretender at Rome. That this correspondence related to a conspiracy, which was formed and carrying on here; and it appears, they took upon them to mention several persons of distinction under a kind of jargon.

Att. Gen. The first letter wherein is mentioned the carrying on the manufactory, the procuring good workmen, and particularly, if he could gain some of the ablest of Mrs. Barbara Smith's, and that it would be very agreeable to all concerned, and particularly to Mr. Atkins, which is the name for the Pretender; shews, that the agents of the Pretender at Rome, had laid designs to procure soldiers, and those, if possible, out of his majesty's troops; which falls in with the evidence we have given of the prisoner's endeavours to get soldiers and serjeants out of the army.

Serj. *Cheshire.* It may not be improper, since we have explained it, to lay before you

the list of several persons' names that are in the army. Pray read No. 7, out of the large bundle.

Cl. of the Cr. reads a List of officers, names with marks and numbers to some of them.

Att. Gen. We did mention before that there were the names of several persons of very great honour and loyalty to his majesty in some of the lists; but this is to shew, that the prisoner was consulting how he might get an account of the number of the forces; as how many colonels, how many captains, and how many soldiers there were in the guards and other troops of his majesty. Read No. 5, in the large bundle.

Cl. of the Cr. reads No. 5. A List of officers of the second, or Coldstream regiment of guards.

Att. Gen. We make the same use of this to shew, that he was searching and examining to get an account of the guards.

L. C. J. I suppose he is taking a survey of the persons that were of the guards, that he might be capable of making a judgment.

Att. Gen. Yes, my lord; and to know their strength: Look out No. 6, in the large bundle.

Cl. of the Cr. reads No. 6. A List of officers in the first troop of horse-grenadiers, the names being distinguished by different letters. No. 7. out of the same bundle. A list, &c. here are eleven of them put down.

Sol. Gen. Read No. 8, in the large bundle.

Cl. of the Cr. reads No. 8. A List, &c.

Att. Gen. Your lordship will observe, that this is a list of some persons' names, and the numbers of horses and men they were to provide.

L. C. J. You will have this to import an account of what quotas several persons were to find.

Att. Gen. The last was read for that purpose: Read No. 15, in the large bundle.

Cl. of the Cr. reads No. 15, containing divers names, with numbers set against some of them.

Serj. *Pengelly.* Read No. 20, 21, 22, 23, and 24, in the large bundle.

Cl. of the Cr. reads No. 20, containing a list of the great officers of the Tower. No. 21, containing names of officers of the second troop of horse-guards, second troop of horse-grenadiers, and fourth-troop of horse-guards. No. 22, containing a list of names. No. 23, containing names of officers of the first, second, third and fourth troops of guards. No. 24, containing the names of two officers of the horse-guards.

Att. Gen. Look upon that list, No. 21, whether there are not some private marks upon it.

Cl. of the Cr. Yes, here is upon one of them a dot, and on the other side there is a dot; and in two or three places some men marked and crossed.

Serj. *Cheshire.* Read No. 25.

Cl. of the Cr. reads No. 25, containing a list of officers, five of them marked to be 'not bad.'

Mr. *Reeve.* Are the words 'not bad' of the same hand-writing?

Cl. of the Cr. Yes, it doth appear to me to be so.

Serj. *Pengelly.* Read the title of No. 22.

Cl. of the Cr. Here are a great many people's names, with marks upon some, and none upon others: upon one of them is writ 'William Johnson, to be gained.'

Serj. *Pengelly.* Read No. 27.

Cl. of the Cr. reads, A List of the third regiment of guards; against several of which names are dots and marks.

Serj. *Pengelly.* Read No. 28.

Cl. of the Cr. reads, A List of the officers of the Coldstream regiment of guards; and a List of the officers of the Scotch guards.

Sol. Gen. Read No. 35.

Cl. of the Cr. reads No. 35. A Paper, containing an account of the numbers of the officers and soldiers in the first, second, and third regiment of foot guards.

Serj. *Pengelly.* My lord, we beg leave to ask Mr. Delafaye and Mr. Stanyan two or three questions, to support the evidence of Mr. Lynch and Mr. Plunkett, in relation to some particular facts; whether at the time of the examination of Mr. Layer before the lords of the council, any thing was said of Mr. Layer's being at Rome?

Mr. *Hungerford.* With humble submission, Mr. Layer's being at Rome, and corresponding with the Pretender, (if he did so) is made treason by another act of parliament, not by this act of parliament upon which he is indicted: therefore, whether he was himself at Rome, or corresponded with the Pretender, cannot be offered as an evidence of high treason upon this indictment.

Serj. *Pengelly.* It is only to shew the probability of his receiving those receipts.

Mr. *Ketelbey* Since we did not know any thing of those papers, we could not properly make our exceptions against them, till we heard them read: and now, if they prove any thing, it is the holding correspondence with the Pretender: but that relates to another late act of parliament; it is another species of treason; and the evidence which they would give of his confession, *viva voce;* they say, it is only to support these papers that are read; who can make any objection to a paper which we did know nothing of? I believe few in the Court know what the meaning of these papers are, now they are read; for my part, I know very little of them; we apprehend, that instead of being allowed to support this evidence, by proving a foreign correspondence between Mr. Layer and the Pretender, by the name of king James, which is made treason by a particular act of parliament; they ought rather to have indicted him upon that, than endeavoured to support their defective proof by giving evidence of an offence, which may be matter of another enquiry.

Att. Gen. My lord, we apprehend a proof, that the prisoner was at Rome, and had con-

trences with the Pretender, will be very proper to corroborate, and explain the evidence that hath been given by the witnesses, and the Pretender's notes, and sir William Ellis's letters to the prisoner; and for those purposes we would make use of it.

Sol. Gen. Though we apprehend we have made our case extremely strong already, yet this which has been opened may be offered by way of further confirmation: notwithstanding the objection which is made, that we are attempting to give evidence of another kind of treason not alleged in the indictment, yet we insist upon it, that it is proper here, as circumstantial evidence of the treason which is alleged. We have proved a conspiracy entered into between this gentleman and others, to bring in the Pretender, and levy war for that purpose; and also, notes signed James R. which he received from sir William Ellis, a person at the Pretender's court. Now, if we follow this, by shewing that the prisoner was actually at Rome, and had personal conferences with the Pretender himself; that, surely, must be admitted to be a material circumstance to support the proof of those other facts. I beg leave to say, that it has been held, even since the stat. 7 Will. 3, that acts of high treason, not laid in the indictment, may be given in evidence, if they conduce to the proof of some overt act which is there laid.

Serj. *Cheshire.* We apprehend your lordship will receive evidence of the same kind of treason in a lower degree, in order to prove the overt act, whereby he consulted and conspired to bring in the Pretender, and place him upon the throne.

As the prisoner did correspond with his ministers, so he had access to the Pretender himself; and he did own it. That we apprehend is going a step higher, something further than already is admitted; and if it is proper evidence, there is no reason why it should be rejected.

Mr. *Reeve.* It is true, we have not indicted him for a treasonable correspondence with the Pretender, therefore they object, we cannot give evidence of any such correspondence upon this indictment.

My lord, we humbly apprehend, every thing that is a circumstance that will gain credit to the witnesses examined, is proper evidence. It looks indeed improbable, that a gentleman of the profession of the law should enter into this treasonable design, which is expressly sworn upon him by two witnesses, whose credit they design to impeach; therefore we humbly offer this as a circumstantial evidence. This gentleman having gone from his profession, hath been at Rome, was kindly received and entertained by the Pretender; thereupon he hath entered into an intercourse with his ministers: and, if we prove this, it is to induce credit to the evidence we have given by positive witnesses. We therefore think it proper, and submit it to your lordship.

L. C. J. They must go on, they are not going upon an evidence of a new overt act of treason; the overt acts are consulting, advising, and agreeing to raise a rebellion.

Mr. *Hungerford.* I humbly beg your lordship's pardon.

L. C. J. If you will not hear me, you will teach me not to hear you.

Mr. *Hungerford.* My lord, I hope we have a right to reply.

Mr. *West.* Upon the first letter of sir William Ellis's he congratulates him, as his friend, on his safe arrival.

Mr. *Hungerford.* My lord, I beg your lordship's pardon; I am in the service of my client, and in endeavouring to do him service, I am verily persuaded I shall not offend your lordship: really, for my part, I cannot satisfy myself that the evidence which they tender to the Court is a proper evidence.

This gentleman is indicted upon the statute de Proditionibus, 25 Ed. 3. The overt acts laid in the indictment are, his consulting, conspiring and agreeing to raise a rebellion, and to levy war against the king, &c.

There is an act of parliament in the last year of king William, whereby the Pretender is attainted, which makes corresponding with the Pretender, or any of his adherents high treason; and when any man commits that particular treason, he is liable to be taken up and prosecuted for it. Now, my lord, shall they be admitted to give an evidence of a treason committed in breach of one act of parliament, when they are prosecuting him upon another; they may as well offer evidence against him for counterfeiting the great seal, or clipping and coining, for the sake of evidence: we hope this practice shall not be allowed; if they are so full of proof (as by their opening they seemed to be) which by the rules of law can reach this man's life, which I cannot yet see, let justice take its course: but we humbly hope they shall not be permitted to give evidence of facts which are entirely foreign to the present accusation, and can be calculated for nothing but to captivate the jury, by acquainting them that the prisoner hath been at Rome. But if the king's counsel will have it effectually published that the prisoner hath been at Rome, let them consent to have him found not guilty upon this indictment, and let him then be prosecuted upon the act, for corresponding with the Pretender, and see what will come of it.

Mr. *Ketelbey.* The act of parliament that makes this new treason is the 13th and 14th of king William; which not only makes that treason which was not treason before, but puts it on a new method of trial in any county of England, where it is laid. Now they would give in evidence a fact, which Mr. Serjeant Cheshire says is evidence of the same kind of treason, though in a lower degree, and ought to be received to prove the overt acts of consulting and conspiring to restore, and bring the Pretender to the throne: As to the evidence that hath been read, we could not have objected to the papers, because we did not

know what they were, nor whether they related to a foreign or domestic correspondence. Now, because they are read, as being found on a person to whom he gave them; shall they, to support a treason of compassing and imagining the death of the king, give evidence of corresponding with the Pretender?

My lord, I do not apprehend the king's counsel have given us any manner of answer; and therefore shall not take up any more of your lordship's time, by repeating in a reply, what I offered before by way of objection: I submit it to your lordship.

L. C. J. Sure as this evidence is offered it is very proper; consider, in the indictment the overt-acts are, meeting, consulting, advising and agreeing to raise a rebellion. The next is, publishing a traitorous libel, in which rewards are promised to those that would assist in this rebellion; a third overt act is, the engaging and listing men for the service of the Pretender; a fourth is, a designing to depose the king; and another is, to set up the Pretender on the throne: Now, consider, if they have not given an evidence of these overt-acts, whether sufficient or not, that must be left to the jury; if they have given evidence of these acts, a design to set up the Pretender, and to depose the king, &c. If they are not proper to shew for this purpose this gentleman corresponded with Rome, was with the Pretender, these letters sent from sir William Ellis to him: letters (according to his desire) purporting receipts for sums of money to be signed by the Pretender, as a foundation to oblige him to make re-payment: After this and these things have been offered, is it not proper to go as far as they can on this head, and shew how far he hath been engaged with the Pretender and his accomplices? Sure it is proper, as a further evidence of these overt-acts.

Do not trouble yourself as to that, no use shall be made of that, to charge you with the treason made so by another act of parliament, about corresponding with the Pretender, for evidence it is proper here,* and it neither can, nor shall be made use of to any other purpose.

Mr. *Reeve.* Mr. Stanyan, pray go on, and give an account of what he confessed, when examined before the lords of the council about his being at Rome.

Stanyan. Mr. Layer did acknowledge he had been at Rome, and returned from thence in July 1721, he said he had had two conferences with the Pretender.

Mr. *Ketelbey.* I think Mr. Stanyan said, he had taken minutes of his examination; I had rather see the minutes than trust to his memory. My lord, in the trial of the two Bailiffs in this court, the substance of what the deceased said was reduced into writing; and therefore the parole-evidence that was offered to be given was rejected. I submit it to your lordship, whether the rule is not the same in greater cases, and much stronger in this point before your lordship. I have not the least disrespect for Mr. Stanyan, and could take his word for any thing but my client's life; therefore, we hope he shall produce those notes, which he hath referred to once or twice, now he is going to give a further account of his examination.

Mr. *Hungerford.* My lord, I was counsel in that case; the justice of peace who had taken Mr. Lutterel's examination did not appear, and that examination could not be had; there was a copy of it taken and produced, and proved in court to be a true copy, but your lordship would not let that copy be read, or the subject matter of it to be given in evidence, unless the original examination itself were produced.

L. C. J. Mr. Attorney, you hear how the matter is, Mr. Delafaye and Mr. Stanyan give an account that they were commanded by the lords of the council to attend and take minutes of Mr. Layer's examination before them; that they have those minutes, and have looked into those minutes to refresh their memories: If they desire they may be produced, do you oppose it? Have you the minutes here?

Stanyan. Yes, my lord.

Serj. *Pengelly.* There may be a great many things that are not material to the present case of Mr. Layer; why should they have all these minutes read? It is not for the sake of the prisoner at the bar, but for the sake of some other people, who may be listening here.

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I asked Mr. Attorney the question, and was not aware of any ill consequence.

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Mr. *Ketelbey.* We do not consent to wave them, but insist upon their being read.

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L. C. J. You are assigned counsel for him, and unless you had, I believe you would not have ventured to have said so much.

Mr. *Hungerford.* No, indeed.

L. C. J. Go on.

Serj. *Pengelly.* Mr. Stanyan, please to recollect, whether when Mr. Layer was examined before the lords of the council, (it is to confirm the evidence of Mr. Lynch) any thing passed about the declaration.

L. C. J. But before you was intending to ask him about his going to Rome, and having conference with the Pretender.

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Stanyan. The lords asked Mr. Layer, if he had seen any declaration; he said no, he had only the heads of one which he drew himself: the lords asked him where that declaration was, he said, he believed one Wilson had it.

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Stanyan. On his way to my lord North and Grey's, at the Green Man at Epping.

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Att. Gen. We submit to it.

L. C. J. It is always so.

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Stanyan. I have recollected the words, and Mr. Layer used those words.

Mr. *Ketelbey.* From whence is it that you are now so positive, and were not so at first?

Stanyan. I did say the words at first.

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Stanyan. I am very positive.

Mr. *Ketelbey.* And yet you were not positive before?

Stanyan. I did not say I was not positive.

Mr. *Hungerford.* Did you give your evidence, that you was certain he said that he had recommended Lynch, as a proper person to be concerned in an insurrection in general, or only as a proper person to seize my lord Cadogan, or both? How did he express himself?

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Mr. *Hungerford.* Then the insurrection was out of the case; he was only recommended to my lord North and Grey as a proper person to seize my lord Cadogan.

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I must desire it in this case, my client is upon his life, and he should have right, I am sure he will have it from the Court and the Jury.

We desire to know whether you give such an evidence of this part of his confession, with respect to his recommending Mr. Lynch to my lord North and Grey, as you will stand by?

Mr. *Hungerford.* Mr. Stanyan, pray, give an account once for all how that matter was.

Stanyan. I can give no other account.

Mr. *Ketelbey.* He hath varied every time; I appeal to Mr. Attorney, I appeal to your lordship.

L. C. J. Wherein is the variation?

Mr. *Ketelbey.* First he acquaints you, that he confessed, that he recommended Lynch to my lord North and Grey, as a fit person to be employed, he thinks, or believes, it was in an insurrection; and then he says, he is positive that he recommended him to my lord North and Grey, as one that was fit to be employed in an insurrection, and at last he says, he was recommended by Mr. Layer to my lord North and Grey, as the fit person to seize my lord Cadogan. I appeal to your lordship's memory, and his own oath, whether this was not so, and yet he is positive of it, he is sure of it.

L. C. J. Is there any difference in all this?

Mr. *Ketelbey.* As much as between being certain, and being uncertain.

L. C. J. For what? You talk of the variation between an insurrection and seizing my lord Cadogan. The insurrection was partly to

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L. C. J. It is enough, I only asked Mr. Attorney General, whether he thought fit to consent to it; and without his consent, we are of opinion, that they cannot be read.

I asked Mr. Attorney the question, and was not aware of any ill consequence.

Mr. Attorney says, the minutes refer to the whole examination, and to a great many other people, and it would be for the disservice of the king to have these things disclosed. Mr. Attorney might have refused to consent without giving a reason, but he hath given a good reason, and therefore will not consent that they be read.

Mr. *Ketelbey.* We do not consent to wave them, but insist upon their being read.

Att. Gen. We do not ask your consent.

Mr. *Ketelbey.* If you do not ask it, nor give it, we are so far even; but I assure you, Sir, we are retained only for one gentleman, the prisoner at the bar, and we have as little reason to be solicitous for the innocence of others, as some have for their guilt.

* See East's Pl. Cr. ch. 2, § 58.

L. C. J. You cannot read the minutes taken against the king, because these matters are not ripe yet, nor to be discovered to the world.

Mr. *Hungerford.* Something dropped, as if we did insist upon the matter for the sake of others; they are mistaken, we contemn such an insinuation. We are of counsel for this man, and for this man singly.

L. C. J. You are assigned counsel for him, and unless you had, I believe you would not have ventured to have said so much.

Mr. *Hungerford.* No, indeed.

L. C. J. Go on.

Serj. *Pengelly.* Mr. Stanyan, please to recollect, whether when Mr. Layer was examined before the lords of the council, (it is to confirm the evidence of Mr. Lynch) any thing passed about the declaration.

L. C. J. But before you was intending to ask him about his going to Rome, and having conference with the Pretender.

Serj. *Pengelly.* My lord, that he hath said already, therefore I ask you what was said by Mr. Layer relating to the declaration?

Stanyan. The lords asked Mr. Layer, if he had seen any declaration; he said no, he had only the heads of one which he drew himself: the lords asked him where that declaration was, he said, he believed one Wilson had it.

Serj. *Pengelly.* Was any questions asked relating to the persons that had seen it?

Stanyan. Yes; he said the only persons that had seen it was, that Wilson, one William Jeffries, a non-juring parson, and one Lynch.

Serj. *Pengelly.* Where did he mention to have shewed it to Lynch?

Stanyan. On his way to my lord North and Grey's, at the Green Man at Epping.

Serj. *Pengelly.* Was there any thing more said by Layer, relating to that journey to Epping, and what?

Stanyan. He said that he went to my lord North and Grey's, and dined at the Green Man as he went; then he carried Mr. Lynch to my lord North and Grey's, and recommended him to my lord North and Grey as a proper person to be employed. I think it was employed in an insurrection, or in any thing else, that his lordship should command him.

Mr. *Ketelbey.* If he is not certain, I desire he may produce his minutes, as he gives his evidence *viva voce*, to refresh his memory.

Att. Gen. We submit to it.

L. C. J. It is always so.

Stanyan. He recommended him as a proper person to be employed in an insurrection, and that Lynch having told Layer before that he would seize the earl of Cadogan, that Layer did mention him to my lord North and Grey as a proper person for such an attempt.

Mr. *Ketelbey.* The first time you said in an insurrection, as you remembered or thought; how come you now to be more certain on the second repetition of your evidence than at the first? On the first account you gave, you say it was employed in an insurrection, as you thought; now upon the second repetition you give a positive evidence, that this was confest by Mr. Layer.

Stanyan. I have recollected the words, and Mr. Layer used those words.

Mr. *Ketelbey.* From whence is it that you are now so positive, and were not so at first?

Stanyan. I did say the words at first.

Mr. *Ketelbey.* But you said it with an alleviation; I desire to know, if you are positive those were the words?

Stanyan. I am very positive.

Mr. *Ketelbey.* And yet you were not positive before?

Stanyan. I did not say I was not positive.

Mr. *Hungerford.* Did you give your evidence, that you was certain he said that he had recommended Lynch, as a proper person to be concerned in an insurrection in general, or only as a proper person to seize my lord Cadogan, or both? How did he express himself?

Stanyan. I will tell you how the words were: Lynch having told him he would seize my lord Cadogan, Layer recommends Lynch to my lord North and Grey as a proper person for such an attempt.

Mr. *Hungerford.* Then the insurrection was out of the case; he was only recommended to my lord North and Grey as a proper person to seize my lord Cadogan.

Mr. *Ketelbey.* I think you have repeated it three times, and different at each time; now please to rectify your memory, and let us have it so as it may be understood.

I must desire it in this case, my client is upon his life, and he should have right, I am sure he will have it from the Court and the Jury.

We desire to know whether you give such an evidence of this part of his confession, with respect to his recommending Mr. Lynch to my lord North and Grey, as you will stand by?

Mr. *Hungerford.* Mr. Stanyan, pray, give an account once for all how that matter was.

Stanyan. I can give no other account.

Mr. *Ketelbey.* He hath varied every time; I appeal to Mr. Attorney, I appeal to your lordship.

L. C. J. Wherein is the variation?

Mr. *Ketelbey.* First he acquaints you, that he confessed, that he recommended Lynch to my lord North and Grey, as a fit person to be employed, he thinks, or believes, it was in an insurrection; and then he says, he is positive that he recommended him to my lord North and Grey, as one that was fit to be employed in an insurrection, and at last he says, he was recommended by Mr. Layer to my lord North and Grey, as the fit person to seize my lord Cadogan. I appeal to your lordship's memory, and his own oath, whether this was not so, and yet he is positive of it, he is sure of it.

L. C. J. Is there any difference in all this?

Mr. *Ketelbey.* As much as between being certain, and being uncertain.

L. C. J. For what? You talk of the variation between an insurrection and seizing my lord Cadogan. The insurrection was partly to

be made on the seizing my lord Cadogan, at the same time as to facilitate the insurrection; both were to go together; if he was a proper person to seize my lord Cadogan, he was a proper person to be employed in an insurrection.

Mr. *Ketelbey.* He is charging the prisoner with his confession, and therefore, I say, he hath mentioned it with two or three variations: first, that he was fit to be employed in an insurrection, and he explains that by seizing my lord Cadogan.

L. C. J. That is part of the insurrection.

Mr. *Ketelbey.* Surely, my lord, this serves to make our objection so much the stronger against allowing parole evidence of a confession, which was put in writing.

Att. Gen. I can't imagine what they mean; here is a gentleman that gives an account, that the prisoner confessed that he recommended Lynch to my lord North and Grey, as a proper person to be employed in the insurrection, and to seize my lord Cadogan; where is the variation in this?

Sol. Gen. Mr. Stanyan, you was giving an account of Mr. Layer's recommending Lynch to my lord North and Grey; did Mr. Layer declare any thing further relating to that matter?

Stanyan. He said my lord North and Grey received him civilly; he supped there, and lay there that night, and they dined there the next day.

Sol. Gen. Did he give any account of what passed at dinner?

Stanyan. I don't know whether it was just at dinner, or afterwards: but he said that several healths were drunk, which were begun by my lord North and Grey; and after dinner there came in a man they called a citizen, they drank the Pretender's health, his wife and the young prince.

Sol. Gen. Did the prisoner say any thing about the christening of his child?

Stanyan. That was, when he confessed before the lords that he was at Rome; in the conference he had with the Pretender, he took occasion to speak of the discontents of the nation, which had been occasioned by the losses sustained in the South Sea. The Pretender asked him if he knew any persons of distinction in that case? He said, that he knew a great many that were well-affected to his interest; that he was not acquainted with people of quality; but that he knew several of good estates that were very well-affected to his interest. Upon this the Pretender asked him several questions; says he, it must be very expensive to you to come hither to Rome, it must cost you 500*l.* No, saith he, not above half so much. Then the Pretender praised his zeal, and commended him; after that Mr. Layer asked the Pretender to give him some tokens or credentials, that he might have something from his majesty; that would be a means of his gaining credit among his friends here. He says the Pretender scrupled that: then Mr. Layer proposed afterwards that the Pretender's wife should stand as god-mother to his daughter, to Mr. Layer's daughter; that afterwards col. Hay, to whom he was introduced at the Pretender's court, brought him word, that the Pretender's wife would stand as godmother to his child: but then the question was, who should represent her? And after some time it was proposed to Mr. Layer to find out a fit person to represent her. Mr. Layer proposed the duchess of Ormond, which was agreed to; after that the Pretender agreed to stand godfather with his wife, and then the point was, who should represent him? And col. Hay told him that he must take care of that, to find a proper person to represent his majesty.

Sol. Gen. What account did he give of what was done in pursuance of this, when he came into England?

Stanyan. When he came into England, he said he applied himself to one Mr. Thompson, to speak to my lord Orrery to stand to represent the Pretender with the duchess of Ormond: but he said my lord Orrery declined it; and afterwards he got my lord North and Grey to stand. That Mr. Thompson did christen his child, my lord North and Grey and the duchess of Ormond standing as proxies for the Pretender and his wife; my lord North and Grey did stand to represent the Pretender, and the duchess of Ormond to represent the Pretender's wife, knowing they did so.

And he was asked by the lords, who were in company at the christening? He said, only the duchess of Ormond, my lord North and Grey, Mr. Thompson the minister, himself, and his wife, and another woman, at whose house the christening was performed: but he said, she was not present in the room, though she assisted at the christening.

Mr. *West.* Did he mention any time when this christening was?

Stanyan. About the spring: I cannot say that question was asked him by the lords, and I cannot ascertain the time.

Mr. *West.* Did he say any thing relating to my lord North and Grey?

Stanyan. He told them of my lord North and Grey's being at the head of these designs.

Prisoner. What doth he concern himself with the lord North and Grey for?

Mr. *West.* Pray, Sir, be quiet.

Stanyan. He said he told my lord North and Grey that he had acquainted Lynch with his lordship's being at the head of this design, therefore Mr. Lynch had expressed a great desire to wait upon his lordship.

Att. Gen. Mr. Delafaye, pray, give an account what Mr. Layer said, when he was examined before the lords of the council, relating to his being at Rome.

Delafaye. Mr. Layer declared to the lords of the council that he had been at Rome, that he had had two conferences with the Pretender, that he had acquainted the Pretender with the disaffection of the nation, with respect to the losses that had been sustained by the South Sea. He said, in general, the nation was well affected,

and that he knew persons of state, not quality, that were in his interest: then he proposed to have credentials or tokens of the Pretender's regard to him, which was not granted him: then he desired the Pretender's spouse should stand god-mother to his child; the Pretender said he would consider of it; col. Hay afterwards brought him word, that she consented; then there were some conferences who should represent her.

Att. Gen. Give the same account that he gave before the lords of the council.

Delafaye. Col. Hay brought word to Mr. Layer, that the Pretender's spouse consented to stand godmother to his child; and it was agreed the duchess of Ormond should represent her; he desired a credential or token to the duchess of Ormond. Hay told him, without that she would stand; only, saith he, carry a message that the duke is well, and gone to Madrid, that she would do it; and Layer desired to know who should stand as god-father; why the king himself, that is, the Pretender; and Layer desired to know who was to represent him; he desired to be excused, but Layer would find out one upon his return into England, that was proper for that purpose; when he came into England he was at a loss for a person to represent the Pretender; he went to Mr. Thompson to advise with him about it, who went to my lord Orrery, to desire him to stand as proxy for the Pretender; my lord Orrery declined it; then he went to my lord North and Grey, who accepted it. The child was christened, it was at Chelsea, I take it, at a house, where there was a china shop. It was in the spring, what day I cannot tell. That he said there was his wife, my lord North and Grey who stood for the Pretender, and duchess of Ormond who stood for the Pretender's wife, the woman of the house, but she was not within the room at the christening.

Att. Gen. Do you remember any thing said by Layer about any declaration that was drawn?

Delafaye. Mr. Layer owned that he had drawn heads of a declaration; and that, when he was going to my lord North and Grey's, he did shew it to Mr. Lynch at the Green-Man, as he was on his way thither.

Serj. *Pengelly.* What said he of his recommending Mr. Lynch in his examination?

Delafaye. He spoke of his recommending Lynch twice; that Mr. Lynch having told him he would seize my lord Cadogan, he did recommend him to my lord North and Grey, as a proper person for that attempt. The second time that he recommended him, he had proposed carrying Lynch to my lord North and Grey's, he having told him that he was a very honest man, fit to be concerned in an insurrection; that Layer having told Finch his lordship was to be at the head of the design, Lynch was impatient to wait upon him.

Att. Gen. We shall now prove there were arms at the prisoner's house when he was seized. Mr. Stanyan, were you at Mr. Layer's house, when he was seized?—*Stanyan.* Yes.

Att. Gen. Do you know of any arms there?

Stanyan. Yes.

Att. Gen. Give my lord and the jury an account what arms?

Stanyan. Just after Mr. Layer was seized I came in, he was just got out of his bed. I observed in the room, where he lay, there were a pair of pistols hung by his bed side, and between them a horse-man's sword, a riding sword, and a pretty large sword; on the other side of the bed next the chimney a little case of pistols, and another sword hung in another part of the room. In the closet of the same room we looked, and I saw two carbines or guns, and two musquetoons or blunderbusses; seeing so many arms, I went to handle some of them, upon which he said, Have a care, they are loaded, don't meddle with them; upon that I asked him what he had to do with so many arms? He answered, you must know my clerk and I are great shooters, when we are in the country. In another room, looking further, we observed several moulds for the making of bullets. There was also a cartridge-box, and a number of cartridges ready made up, as near as I can guess (I did not count them) there were about forty or fifty of them. There was a gentleman of the army, and he said they were such cartridges as were used in the army.

Att. Gen. Was there any thing relating to these arms confessed by Mr. Layer before the lords of the council?

Stanyan. He did not deny it, I believe.

Att. Gen. I would ask you whether there was any thing said before the lords relating to these arms?

Stanyan. The lords did ask Mr. Layer, what did he with forty or fifty cartridges ready made up? He said they were made up by Bowers the gunsmith, and that, if there was any disturbance in the nation, he should have occasion for them.

Att. Gen. Mr. Delafaye, was you by when he was asked the question about these arms?

Delafaye. Yes; he was asked what he did with so many cartridges and arms, and he said they were proper for his use, if there should be any disturbance in the nation.

Colonel *Huske* sworn.

Att. Gen. Was you by when these arms were seized in Mr. Layer's house?

Huske. Yes; there were two cases of pistols, two fuzees, and some other arms, and a blunderbuss, and two or three swords; there were about 40 cartridges ready made up in the usual manner, as they are made up when our soldiers are to charge their pieces for expedition in case of action.

Att. Gen. How many were there?

Huske. About forty.

Att. Gen. Did you see any moulds for bullets?

Huske. There was a mould for musket-balls.

Prisoner. You say I had two fuzees; will a musket ball go into a fuzee?

Huske. I cannot tell but it may.

Prisoner. There were forty cartridges, which were ready made up, will those cartridges go into a fuzee?

Huske. These very cartridges were only fit for the army.

Mr. *Ketelbey.* These cartridges were not fit for the musket?

Huske. I did not try them.

Mr. *Ketelbey.* Would they go into a fuzee?

Huske. I don't know.

Mr. *Ketelbey.* According to my notions, there is a difference in bigness between a fuzee and a musket; and a cartridge fit for a musket will not go into a fuzee.

Huske. A cartridge that is fit for a fuzee, will go into a musket.

Mr. *Ketelbey.* I believe that, and so it will into a cannon; therefore I ask, whether a cartridge that is fitted to a musket, and proper for the use of a soldier going to battle, whether that cartridge will fit a fuzee?

Huske. The bore of a fuzee may be made as large as that of a musket.

L. C. J. Those cartridges that were there, would they have served for the fuzee?

Huske. I am satisfied that they would serve for the fuzee, and the smallest arms there, except the pistols.

Mr. *Ketelbey.* You say there were two swords?

Huske. Yes, I saw two swords.

Mr. *Ketelbey.* I believe you never are without two swords?

Huske. I believe I have a dozen, but they belong to my company.

Prisoner. Were they horse-swords, or swords fit to walk with?

Huske. I can't tell that.

Mr. *Hungerford.* I think you say, that those bullets, made into cartridges, were, by the size of them, intended for the small arms?

Huske. I do believe they would fit the two fuzees that I saw.

Mr. *Ketelbey.* Did you open any of the cartridges?

Huske. I did, and there was a ball made up at the end of each cartridge.

Mr. *Smeybert* sworn.

Sol. Gen. Do you know the prisoner at the bar?—*Smeybert.* Yes, I do.

Sol. Gen. Recollect whether you have seen him at Rome?—*Smeybert.* Yes, I have.

Sol. Gen. When?

Smeybert. About a year and a half ago.

Sol. Gen. For how long time was he there?

Smeybert. I think about a week or a fortnight.

Sol. Gen. Did you or the prisoner leave Rome first?

Smeybert. I left Rome first.

Mrs. *Hay* sworn.

Serj. *Cheshire.* Did you ever see the prisoner?—*Hay.* Yes.

Serj. *Cheshire.* Where did you see him?

Hay. I saw him at Rome.

Serj. *Cheshire.* When?

Hay. Last summer was twelve-month.

Serj. *Cheshire.* What time of the year was it, as near as you can remember?

Hay. I cannot tell exactly what time, but it was last summer was twelve-month.

Serj. *Cheshire.* You are sure you saw him there?—*Hay.* Yes.

Att. Gen. My lord, we shall now prove the prisoner's escape out of the messenger's custody, as was opened before. Call Mr. Squire.

Mr. *Squire* sworn.

Att. Gen. Look upon the prisoner at the bar, do you know him?

Squire. Yes, I do know him.

Att. Gen. Do you know any thing of his being taken up? Give an account when it was that he was taken.

Squire. He was taken the 18th day of September last.

Att. Gen. Whose custody was he in after he was taken?

Squire. He was in my custody.

Att. Gen. What became of him afterwards? Did he continue in your custody?

Squire. No, he made his escape.

Att. Gen. How long after he had been taken was it that he made his escape?

Squire. It was the next day, he got out of the window.

Att. Gen. How high was the room he got out of?

Squire. It was two story high; he lifted up the sash, and so got out of the window.

Att. Gen. Did you pursue him?

Squire. Yes.

Att. Gen. What account can you give of his being taken again?

Squire. He had not been gone long before I found he had made his escape, and understanding which way he went, I immediately pursued him, and I took him in a lane going towards St. George's fields.

Att. Gen. What did he say?

Squire. He said he was very sorry to see me; I asked him how he could offer to go away from me; and he said every body else would have done the same in his condition, and that nobody could blame him for it; and that he believed my lord Carteret would not blame him.

Att. Gen. But why?

Squire. Because he looked upon himself in such a bad condition, and so much danger, he said, nobody could blame him, because he was in that condition.

Prisoner. What condition? I desire to ask you one question; Did not I ask you to shew me your warrant?

Squire. No, you never asked me.

Prisoner. Did not I ask you at my own house?—*Squire.* No, you did not.

Prisoner. Did you shew me your warrant?

Squire. You did not ask me for it.

Prisoner. Did not I tell you the reason that I escaped was, because I did not know what authority you had to detain me?

Squire. No, you did not.

James Peterson sworn.

Att. Gen. Mr. Peterson, do you know any thing of the prisoner's escape?

Peterson. Mr. Layer was in custody at my father's house, in Mr. Squire's house, in a room up two pair of stairs backwards.

Att. Gen. Do you know any thing of his getting away?

Peterson. No, I was abroad then.

John Sweete sworn.

Att. Gen. Look upon the prisoner at the bar; do you remember you ever saw him before?

Sweete. Yes, I saw him just going into St. George's fields.

Att. Gen. Did any body take him there?

Sweete. I was the first that took him.

Att. Gen. What did he say to you when you took him?

Sweete. He said, For God's sake let me go; and said it was an arrest: Why then, and please you, my lord, my partner came up, and asked him, whether it was an arrest, and he said it was; and then looking about me, I saw another person coming after us, who was the messenger: It seems he had broke out of the messenger's house. And then he clapt his hand into his pocket, and pulled out I believe about forty guineas, and said we should take what we would if we would let him go; but we would not.

Anthony Stephens sworn.

Att. Gen. What did Layer say when he was first taken?

Stephens. We asked him, is it for an arrest? Yes, says he, it is an arrest; and when he saw Mr. Squire's son coming after us, he would give us whatever we pleased to let him go; and more than that he said they had no warrant, and he did not know that they could keep him without a warrant.

Serj. *Pengelly.* My lord, we have gone through our evidence, and shall rest it here.

Mr. *Hungerford.* May it please your lordship and you gentlemen of the jury, I am of counsel for the prisoner at the bar; and after so long an evidence hath been given in this cause, it will best become me to draw the matter in debate to a single point, if I can, and thereby to give ease to your lordship, the jury, and the counsel on both sides. My lord, the prisoner is indicted upon the statute of the 25th of Edward the third, commonly called the statute De Proditionib', the things made, or rather declared treason by that act, are first, the compassing or imagining the death of the king, or of the prince of Wales. Then the statute goes on to declare other things treason which relate only to the persons of some of the royal family; and then it declares likewise, that it is treason to levy war against the king, &c. It is not said, that to design or contrive to levy war, but actually to levy war only shall be treason.

This is the text, this the law upon which the gentleman at the bar must be either saved or condemned. The treason laid to his charge is compassing and imagining the death of the king: the overt-acts laid to his charge are, that he did consult and conspire to levy war.

That he did publish a certain treasonable libel, purporting, among other things, a promise of reward to his majesty's faithful subjects, to rise in arms and levy war against the king.

That he consulted to put the Pretender upon the throne.

That he listed soldiers for him.

And the last overt-act is, that he consulted to seize and imprison the king.

My lord, and you gentlemen of the jury, there is no evidence of any of these overt acts attempted to be given in evidence against him in Essex, save only that of publishing a treasonable libel, which the king's counsel in their evidence would insinuate to be the Pretender's declaration. The evidence of the other overt-acts are attempted to be proved in Middlesex. And in truth, the greatest part of the whole transaction was by the king's own evidence, proved to be in that county, and I wonder the indictment was not laid there; but, gentlemen, the indictment being laid in Essex, if an act of high-treason is not proved to have been committed by the prisoner in that county, he must be acquitted.

I might here, my lord, insist, that an actual levying of war, and not design to levy a war, being made treason by the statute of treasons, the publishing a paper which purports at the utmost but an intention only to levy war or raise a rebellion is not treason, and consequently not a legal overt-act within that statute. This opinion is warranted by the express words of the act of parliament itself, which is a better authority than all the commentators upon it; and it is likewise the opinion of my lord chief justice Coke,* and my lord chief justice Hales; and in truth, if this be not the true meaning of the act, one paragraph, viz. That which declares actual levying of war treason, is superfluous and redundant; for what is the use of making actual levying of war, or a rebellion, a distinct species of treason, when the intention of doing it, according to some modern doctrines, was high-treason within the first clause of the act, viz. Imagining the death of the king? This opinion likewise seems to be confirmed by the two acts of parliament, one in queen Elizabeth's time, and one in king Charles the second's,† where consulting or intending to levy a war or raise a rebellion, is made high-treason during the lives of them two respective princes, for which temporary provision there would be no reason if the law were so before. I know what hath been said to some part of this matter, that the

* Coke's Instit. ch. 1, p. 9, and 10. Hale's Pleas of the Crown, p. 13.

† 1 Eliz. ch. 1, 13 Car. 2, ch.

levying of war meant in the statute of 25 of Edward the third, was not meant of such a rebellion as was levelled against the king's person, crown, title, or government; but of such public commotions as disturbed the peace of the kingdom, as the pulling down of inclosures, which was the case in queen Elizabeth's time, or of pulling down bawdy-houses, which was the case in Charles the second's time: but to shew how unnatural a construction of the words 'lever le guerre,' it is to say, that it relates only to such riotous commotions as I have mentioned. Give me leave, my lord, to make but one observation. The statute of treasons is penned in the French of that age, and the words of the statute 'lever le guerre' against the king, I have here within the reach, in court, a book of very great note and good authority, it is the history of Froissart, who writes the history of England, France, and Spain, from the year 1326, to the year 1340, and dedicates his book to that very king, viz. Edward the third, in whose reign the statute of treasons was made, and in this whole book, 'lever le guerre,' is constantly mentioned to denote a public stated war; and in this sense, it is likewise taken by Du Fresne in his Glossary, vol. 2, pag. 255. —I only hint this matter to your lordship, for I well know what determinations my lords the judges have of late years given upon this objection; but I humbly hope that there will be no occasion for an entire dependence upon this objection in this case, for that I hope it will appear both to your lordship, and the jury, that no such overt-act, as is laid in the indictment, that is, publishing the Pretender's declaration at the Green Man, is at all proved.

The evidence given touching that matter is only by Mr. Lynch; and he gives an account that the prisoner and he met at Aldgate, in order to go to the house of my lord North and Grey at or near Epping: in the course of their journey thither, finding themselves too late to be at my lord North's by dinner; they called in at the Green Man, and there got a beef-steak: and before it was brought up the prisoner gave Mr. Lynch a paper, which Mr. Lynch, and not the prisoner, calls the Pretender's Declaration: Mr. Lynch reads only one paragraph in it, whereby, as he says, the soldiers were tempted to be allured from his majesty's service; this is the whole evidence given touching any offence committed in the county of Essex: for as to any treasonable discourse between Aldgate, and the Green Man; they cannot in justice, and without a particular proof to that purpose, be charged upon the prisoner to be done in Essex, a great part of the way, viz. from Aldgate to Bow-bridge, being in Middlesex, and not in the county of Essex.

In the first place, therefore, gentlemen of the jury, we hope there is no evidence to convince you that any such declaration was published at all; and yet, secondly, If there was a paper read there, the paper read was not an act of high-treason. The time that the prisoner and Mr. Lynch staid at the Green Man, seems to be very short, their stay was so short that there was no evidence that their horses were put up: the beef-steak was bespoke before they went into a room. Mr. Lynch came down twice out of the room; he himself admits once, besides his gaping at some persons in the yard whom he knew, before the beef-steak was brought up; and yet, before the beef-steak was brought up, this declaration is pretended to be published: for my part, considering how little time there was for such a transaction as this is, I cannot think there could be any such thing as that transacted at that time, the compass of time would hardly allow it; whatever was done, is admitted on all hands, to be done before the beef-steak was brought up, and the other incidents may very well be supposed to take up all the time betwixt the bespeaking and dishing up the beef-steak; so there could be no time for so solemn an act as publishing a declaration to overturn three kingdoms. But in the second place, if the prisoner, which I don't admit, did give Mr. Lynch any paper to read, a paragraph whereof was to the purpose Mr. Lynch relates; yet such paper cannot be imputed to the prisoner as an act of high-treason, there were but a few lines of the paper read, and the rest were not read at all, either by Mr. Lynch, or the prisoner; and I never knew that part of a deed or writing was ever allowed to be given in evidence, without producing or reading the whole. In the case of my lord Russel, where the declaration for rebellion was assigned as an act of high-treason, the whole declaration was proved to be read, and not a part only; and yet even that evidence was upon the revolution in the first year of king William and queen Mary, looked upon so imperfect an evidence of high-treason, that for that, and other reasons, my lord Russel's attainder was reversed; we have a copy of the act of parliament for the reversal here attested, and we are ready to produce it if your lordship thinks fit.—Can it be said that the prisoner giving Mr. Lynch a paper, of which he reads only a few lines, and then the prisoner takes it up again, is a publishing of a treasonable paper, or in truth, a publishing of any paper at all? Declarations for rebellions are commonly published in public places, to captivate multitudes, and not handed from one man to another when they are expecting a beef-steak; there was no appointed or solemn meeting at the Green Man; no concourse of people there, neither in truth, by Mr. Lynch's own evidence, can it be taken to be a real declaration; for he says, as I remember, in that paper it was mentioned that the lord Cadogan was in custody; that fact is utterly false, his lordship neither was, nor is so.

I must submit to the consideration of my lords the judges, and the jury, of how dangerous a consequence constructions of this nature may prove to be. Before the statute of

treasons, the people of England laboured under vast mischiefs by the great incertainty there was of what was high-treason, and what was not; the parliament thereupon, to ease the people of that perplexity, in the 25th of Edward the third, passed the law of treasons, for which the people then paid a great sum of money; and for which that parliament was called blessed (parliamentum beatum), and now if every act a man doth, though perhaps tending to sedition, shall be interpreted to be an overt-act of high-treason, the subject will labour under the same inconvenience, and under the same perplexities, as they were before the statutes of treasons; this practice may be so far improved, that if a man delivers a seditious ballad to another to be read, that shall be interpreted an overt-act of high-treason; much more if people in their cups should drink such healths, as were said to be drunk at my lord North and Grey's house; for no man can deny but that 'bibere est agere,' whatever 'scribere' is: this, my lord, is all that occurs to me at present concerning the charge of high-treason upon the prisoner within the county of Essex; and if there be no charge made out against him there, the evidence given against him, of what he did or said elsewhere, must go for nothing.

Mr. *Ketelbey.* May it please your lordship, and you gentlemen of the jury, I likewise appear here as counsel for the prisoner, who having pleaded Not Guilty to this indictment, I must suppose him so till he be found otherwise; and it is my duty (being assigned for him by the Court) to lay the circumstances of his case before you in as true and clear a light as I can, and to offer to your consideration what may occur proper for his defence, and legally conduce to the clearing his innocence.

The charge laid to him is of the highest nature that the laws of England know; 'crimen læsæ majestatis;' no less than the conspiring and compassing the death of the king; and as it is an offence not capable of any aggravation, not to be alleviated by any thing that we can offer, we humbly hope your lordship, and the gentlemen of the jury, will expect the strongest evidence the nature of the case admits, such as the law requires, and is, in some measure, proportionable to the greatness of the offence.

The act of parliament upon which the prisoner stands indicted, is the 25th of Edward 3. It is there said, to make him attainted there must be an overt act, and that overt act must be fully and clearly proved: 'Et de ceo provablement soit attaint de overt fait.'

My lord Coke, in his third Institutes, fol. 12, in his comment upon that act, explains the word 'provablement' by saying it must be upon direct and manifest proof, not upon conjectural presumption, or inference, or strains of wit; it must not be 'commune argumentum.'

Since that time, several other statutes have been made in favour of the subject, and for regulating trials in cases of high treason: particularly the late statute 7mo Gulielmi 3, which enacts, that there must be two lawful witnesses to the same overt act; or one of them to one, and the other of them to another overt act of the same species of treason: and that no evidence shall be admitted or given of any overt act that is not expressly laid in the indictment.

I think we need not, at present, enter into the whole of the case, or trouble the Court with a long detail of circumstances and many witnesses; but rather chuse to leave that on the foot Mr. Hungerford hath put it for your lordship's consideration.

It must be admitted to us, that if the prisoner is not guilty of an overt act, legally proved to be committed in the county of Essex, where the species of treason and all the overt acts in the indictment are laid; though all the other facts in Middlesex, or at Rome, or any where else, should be never so clearly made out, yet they do fail upon this indictment, and the prisoner must be acquitted.

What have they to charge him with such an overt act? Nothing but the single evidence of Lynch! He is the only person that speaks to this point. He says, that they set out from Aldgate in order to ride to my lord North and Grey's, and alighted at the Green Man; that what discourse passed between them there was before dinner: he owns he went down stairs twice before dinner, and spent some time in looking out of the window, to see some persons with whom he was acquainted, and when the dinner (which was soon got ready) was brought up, Mr. Layer's servant came and waited, and no discourse passed there during that time; he tells you, that Mr. Layer pulled a paper out of his pocket, and shewed it to the witness, who read part of it, and that it contained treasonable matter, as laid in the indictment: this is the substance of what Lynch swears, I took it, as well as I could, in writing from his mouth.

Now, my lord, is this sufficient to convict this gentleman of committing an overt act of high treason in Essex? A bare pulling a paper out of his pocket, and giving it him to read, where such and such a thing is set forth, as by him is called a treasonable declaration!

My lord, if he had pulled out of his pocket the most treasonable paper that ever was invented, is it any more than publishing a libel? Is that an overt act of treason? I will suppose it a copy of the Pretender's declaration, or an original, such a one as was burnt by the sheriffs of London two days ago: if a man had that, and pulled it out of his pocket, and gave it to another to read, is this high treason? I dare say, if any such person falls into Mr. Attorney's hands, he, that always does his duty to the crown as he ought, will go no higher than an information for publishing a libel; and all this, my lord, is upon a supposition that the facts are true which have been sworn by Lynch: but, on the other hand, there are so many unaccountable circumstances in the relation, that an

affair of that consequence should be transacted in such a place; in so short a time; upon such an accidental bait; when one of the conspirators was either gazing at the window, or running up or down stairs the greatest part of the while, and other persons were continually going backwards and forwards into the room, or within hearing of every word that passed there, we think it carries with it such an air of improbability, that no reasonable man can give credit to it, much less convict a person of so great a crime upon such evidence.

But suppose what passed at the Green Man (which I am very far from admitting) should be adjudged an overt act of high treason: how is it proved? Only by one witness; one single witness to the fact in this county! The law requires two witnesses to convict a man of high treason, and that the jury should be returned out of that county where the facts are laid; 'de vicineto:' because the law supposes them more conusant of the circumstances of a case which arises in their neighbourhood: but if the proof of one overt act in the county where it is laid, by one witness, should be sufficient to let them in to prove other overt acts in distant countries, or in foreign kingdoms, these fundamental rules of law would be totally subverted: how is it possible for a man to provide or defend himself against such an attack? It is springing a mine upon him! Sudden and unexpected ruin!

Mr. Attorney won't shew any precedent, where it ever was allowed to be good, that one witness might prove the overt act in the county where it is laid, and that then they might give evidence of overt acts committed in any other county: if your lordship is of opinion against us in this particular, then we must beg leave to go farther, and observe upon the rest of the witnesses they have called; not only to take off their credit, but to contradict them in a great measure.

There hath been a great deal of other evidence given by them, but we must submit it to your lordship, whether it is material his escaping from the messenger's house, and his being taken in St. George's-fields; and the evidence begins to run thin, or else I believe they would not have troubled the Court to call those persons to that which is no ways conducive to the point now in judgment; if your lordship is of opinion with us, that this is not an overt act in Essex, and legally proved, being there is but one witness, and attended with such circumstances, then the matter is at an end; but if your lordship is of another opinion, then we must beg leave to go on, and likewise to offer what we have from the mouth of our witnesses.

L. C. J. You must go on, you have mixed your discourse so that nobody knows what to make of it; sometimes though the fact are clear as to the overt act, you have said as much against, as for, the improbability and nature of the thing, in point of law, as for the other. I don't see how we shall come at it, unless you go through the cause.

Sol. Gen. My lord, in the observations they have hitherto made, they have mixed objections as to the fact, together with some matters of law, that seemed to be aimed at, and fixed upon no point; to which we cannot give any particular answer; therefore we desire they may go through their whole case, before we reply to any part of it.

Mr. *Hungerford.* Since it is your lordship's pleasure that we shall now go on, I shall proceed to make some observations upon the rest of the evidence given against the prisoner at the bar out of the county of Essex. The observations which I shall make will be in the general only, for I cannot descend to all the particular instances of the evidence given, having not taken proper notes for that purpose; for I depended upon the insufficiency of the evidence given touching any act of high treason being committed in Essex; and I hoped that from that very circumstance the prisoner would have been acquitted; but, however I know the learned gentleman who is joined with me, hath taken very exact notes of the whole evidence, and therefore what I omit, I am assured he will abundantly supply.

The second witness produced against the prisoner, is Mr. Plunkett, whose evidence I think ought to weigh but very little with any judicature whatsoever; the prisoner's meeting with this man was very accidental in Lincoln's-inn-fields, when they did not know each other, and yet they immediately entered into a discourse of raising a rebellion, and overturning two kingdoms, and that great secret of knowing who was to be the general; though Mr. Lynch, after long acquaintance with the prisoner, could not get it out of him; yet it was communicated to the eminent witness Mr. Plunkett at the first interview, with an addition of mentioning the names of two very great men more, the earl of Strafford and general Webb, as well-affected to the undertaking: but that noble earl's and great general's services to their country, are too well known to be blemished by such an incredible evidence. After some discourse betwixt the prisoner and Plunkett about the undertaking, in which there was an incident of a discourse of another nature, whether the Lutheran religion were not preferable to the Popish? And after (as Plunkett says) the prisoner had communicated to him an intention of invading the kingdom by some persons from abroad, the prisoner, in a very great fit of bounty, presents Mr. Plunkett with the sum of half a crown. This relation seems to be so improbable, and in truth, is delivered (or rather stammered out) in so wretched and incoherent a manner, that I believe that no one that heard it believes a word of it.

The truth is, the scheme itself seems rather to be a chimerical plan of some crazy-pated politicians, than a solid project of any men of sense, or in their wits. What undertaking can there be so improbable, as that laid down by this scheme, viz. seizing the general of the army, seizing the Tower, seizing the Exchange,

and seising the Bank of England; and all this with a force which does not appear to consist of above three or four men? and for money, the news of war, there seems to be no great stock of that; Plunkett hath about half a crown at one time, and half a guinea at another; for as to the guinea Jeffreys gave him, it doth not affect the prisoner. Mr. Lynch indeed, who seems to be a man of greater weight, upon his frequent repeating himself to be very uneasy, got about seven or eight guineas. I mention these things, gentlemen of the jury, to shew how improbable this part of the evidence is of itself, and we hope to make it appear to you to be the more so, by the evidence we shall produce to the reputation of the witnesses.

As to the papers of all kinds produced as evidence against the prisoner, we hope he cannot be affected by them, none of them being proved to be of his hand writing; as to the arms found in the prisoner's house, they are no more than what gentlemen usually have for the defence of their family, or their recreations; and as for his being at Rome, it is admitted that the evidence is not given as a fact of high-treason: so ought not to be considered as any ingredient in the prisoner's guilt: As to the prisoner's endeavouring to escape, it is no evidence of the prisoner's guilt; I do not enter into the consideration, whether the custody of a messenger is a legal prison, or no; but there is hardly a man that is under any confinement at all, but would willingly escape into liberty: Besides the prisoner hath suffered already for that offence, if it be one; he hath been put into irons, and his attempting to escape is the only reason that is assigned for it.

There was something spoke in the introduction to this accusation which was very remarkable, viz. that it was a design, if it had took effect, that would have engaged the whole nation in blood, and would have destroyed our civil and religious rights: We who are of counsel for the prisoner, have as great an abhorrence of a thing of that nature as any men can have: But yet we hope, that mankind is not to be led away with shew and colour, but to be guided by reason and matters of fact. Is it possible that people could have been raised into a rebellion by a proclamation which was never published, but by Mr. Lynch's reading two or three lines of it? And which, by Mr. Lynch's own evidence (which I forgot to remark before) was imperfect; for he says, that the prisoner told him, he intended to put it in the Pretender's name, which it seems was not then done; and therefore what was produced, was at the utmost an imperfect piece only. Or that the prisoner at the bar, a man of a gentleman-like family, indeed, but of no great figure or estate in the world, and having no dependants or numerous acquaintance, having no provision of men, arms, or ammunition, should, with the assistance only of a bundle of papers, and of Mr. Lynch and Plunkett, overturn and enslave this whole kingdom. God be thanked, the Protestant British government is not so easily to be brought to destruction: they might much sooner (and yet I think that very difficult too) have borrowed 100,000*l.* of the Bank of England, upon the blind notes which they have produced, sent by sir William Ellis, than have brought about a revolution in this kingdom, with such materials as they seemed to be possessed of.

These things therefore, my lord, I urge, are circumstances which render all, or the greatest part of the evidence given, very improbable.

I shall close the whole with two paragraphs of a speech* made by one of your lordship's predecessors, my lord chief justice Scroggs, sitting in the same sacred seat of justice where your lordship now sits; the words are these:

"If once our courts of justice come to be awed or swayed by vulgar noise, and if judges and juries should manage themselves so as would best comply with the humour of the times, it is falsely said that men are tried for their lives or fortunes; they live by chance, and enjoy what they have as the wind blows, and with the same certainty.

"Let us pursue the plot a God's name, and not baulk any thing where there is danger or suspicion upon reasonable grounds; but not so overdo it, as to shew our zeal, we will pretend to find what is not; nor stretch one thing beyond what it will bear, to reach another."

Mr. *Ketelbey*. I must beg leave to go on where I left off with Lynch's evidence.

All Plunkett saith was in Middlesex; but whether he is a credible witness you will hear by and bye. I cannot but take notice of one thing which is unaccountable in his evidence, and renders it impossible to be true: He gives you an account of a letter which he received about ten weeks ago; he is very positive as to the words of the letter, I asked him over and over again to it, he repeats it as such; when we examined him farther, it appears that he could neither write nor read; and how he came to remember so perfectly, when he could not write nor read himself, is very strange. Why, saith he, it was read over to me twice, and we have heard him repeat it three times; and I appeal to the jury, if any one of them can take upon him to repeat it again with that exactness the witness pretends to do.

Is it not equally strange, my lord, that Jeffreys, a man of letters, the first time he saw him, an ignorant common serjeant in the army, should immediately fall into a discourse with him about a plot, and raising a rebellion, as if he had before been intimate with him? So likewise, he saith, of James Plunkett, the same day, the first day he came to him, he came to his own house, and there talked to him about this affair; as if they had nothing else to talk of but rebellion against the government. And

* Lord Chief Justice Scroggs his speech the first day of Michaelmas term, 1679. Printed that year. *Former Edition.*

I submit it to your lordship and the jury, whether it is likely or possible, that any man of common sense should subject himself in so dangerous an affair to another that was an utter stranger to him: But here he gives you an account of two several persons under the same imprudence, the same infatuation, James Plunkett and the non-juring parson. Besides, there is a manifest contradiction in his evidence: for, at first he said, that the non-juring parson told him his name was Jeffreys the first time he saw him; and afterwards being cross-examined, he said, the first time he knew his name to be so was upon the receipt of his letter, and finding the name so subscribed.

The next witnesses gave an account of the seizing the papers, and then Mrs. Mason. We asked her if those papers had been seen by any body since she had them, and whether she had shown them, or any other papers, to sir John Meeres, or any of his servants? She positively denies it, and saith they were not.

I don't know whether these papers were seen by any body, for we have not one word of them in our briefs, and the very producing them is a surprize to us; but we shall prove, that this woman shewed some papers to sir John Meere's or his man, and that thereupon notice was given, and the papers soon after seized. But whether these are they or not, I cannot tell. I observed before upon the evidence of Mr. Delafaye, Mr. Stanyan and Mr. Doyley; and though your lordship was of opinion, that it was sufficient to have the paper called the Scheme read, yet we hope it is far from being a conclusive evidence against the prisoner, it not being found in his custody; and we shall produce several who now are, and for many years have been well acquainted with his handwriting, who will give your lordship their thoughts of it. I believe Mr. Attorney would not have endeavoured to call witnesses that it was signed by him, and was his own handwriting, if he had not thought it material: yet we hope that when our witnesses are heard, no credit will be given by the jury to it, as a fact to charge the prisoner. We shall give you an account, if my instructions are true, that Plunkett, Lynch, and Mrs. Mason, who are the persons chiefly concerned in the course of this evidence, are of so scandalous and vile a character, that no regard at all is to be had to their testimony. The most honest men may mistake in their evidence, as Mr. Stanyan is pleased to say; if he made any mistakes, I am satisfied they proceeded from a defect of memory, and no design, and he is certainly excusable; but as for the other three, Lynch, Plunkett, and Mason, when you shall have heard half what we have against them, I dare say they will not have the least credit, though they had given a much more probable evidence than they have done. But surely as it is, their evidence cannot have sufficient weight with you, to prevail against the life, estate, and family of the gentleman here before you, and to fix a perpetual stain upon him and his posterity.

Mr. *Hungerford.* My lord, we shall call our witnesses, and begin with my lord North and Grey.

Att. Gen. We desire to know what it is you call my lord North and Grey to prove?

Mr. *Hungerford.* He is to give an account of what passed at his house, what Mr. Lynch said when he was there.

L. C. J. Then you do admit that he was at the Green Man, and he went to my lord North and Grey's afterwards?

Mr. *Ketelbey.* There is their sheet-anchor.

Mr. *Hungerford.* We admit we were at the Green Man, but committed no high-treason there; your lordship hath set us right in the point of timing our evidence in the nature of this transaction; it is proper to begin with the master of the Green Man.

Mr. *Mackreth* sworn.

Mr. *Hungerford.* Mr. Mackreth, pray, give my lord and the jury an account whether Mr. Layer, or Mr. Lynch were at your house last summer, or how long they were there?

Mr. *Ketelbey.* I think you are master of the Green Man?

Mackreth. Yes, Sir, upon the oath I have taken, I do not know that Mr. Layer was ever at my house.

Mr. *Ketelbey.* Do you remember any thing of the Saturday the 25th of August?

Mackreth. No, I cannot.

Mr. *Ketelbey.* Do you remember whether you were at home that day?

Mackreth. I cannot tell: If it was on a Saturday; on Saturday I often attend the justices at Ilford.

Mr. *Ketelbey.* Do you know whether you was at home that day?

Mackreth. I cannot tell.

Mr. *Ketelbey.* Do you know Mr. Layer?

Mackreth. I never saw him before in my life, as I know of.

Mr. *Ketelbey.* Was there never any enquiry after him at your house?

Mackreth. No: There was the duke of Grafton and my lord Halifax came to my house some time since. The duke of Grafton intimated something of this affair; the duke of Grafton said to me, You are to be hanged: Hanged, for what? said I. You and your friend Layer are to be hanged. Said I, I never saw him in my life. They walked to and fro in the hall. What, said they, do you know nothing of this Layer? No, I don't, as I hope to be saved, directly nor indirectly.

Mrs. *Mackreth* sworn.

Mr. *Hungerford.* Pray, do you remember any travellers at your house upon the 25th of August last?

Mr. *Ketelbey.* Do you remember when Mr. Layer was at your house?

Mackreth. I never saw the gentleman in my life, as I know of.

Mr. *Ketelbey.* Are you constantly at home?

Muckreth. Yes, I have hardly time to go to church.

Mr. *Ketelbey.* Did you ever hear any thing of a declaration read?

Muckreth. I never heard any thing of it in my days, my lord.

Mr. *Hungerford.* Pray, do you know the room one pair of stairs forward in your house?

Muckreth. They are all forward, my lord.

Mr. *Hungerford.* How far is the bar from the room?

Muckreth. My bar is below stairs, even with the stair-case.

Mr. *Hungerford.* If any thing is read there aloud, in any of those rooms one pair of stairs, could you have heard it?

Muckreth. To be sure, my lord.

John Paulfreeman sworn.

Mr. *Hungerford.* Do you remember any thing of this gentleman being at your master's house on the 25th of August last?

Paulfreeman. I remember nothing at all of it.

Mr. *Hungerford.* You remember nothing of it?

Paulfreeman. No; to my knowledge I never see him before in my life.

Mr. *Hungerford.* Do you remember any thing of some people dining there on a beef-steak?

Paulfreeman. No; I don't remember any thing of it.

Mr. *Hungerford.* Do you remember this gentleman's face again?

Paulfreeman. No; I don't remember that ever I saw him before.

Mr. *Hungerford.* Is my lord North and Grey there?

Mr. *Hungerford.* We shall examine my lord North and Grey only as to some passages at his lordship's house, and chiefly as to the character of this Lynch, and what a character he gave of himself; generally, a man will give a good character of himself, but he did otherwise.

Lord *North* and *Grey* sworn.

Mr. *Hungerford.* If your lordship pleases to give my lord and the jury what account you have of one Lynch.

Lord *North* and *Grey.* My lord, that gentleman that goes by the name of Lynch I saw twice; he came twice to my house in Essex: I little thought that my having seen him twice at my house, should be the occasion of my coming here in such a manner. The gentleman was wholly a stranger to me, and I have never seen him since. As to myself, I cannot say I know any thing of him personally. The only thing I can say, is what he said of himself. It is a little hard for a man of honour to betray conversation, what passed over a bottle of wine in discourse; but since your lordship requires it, I must submit.

The chief of our discourse was—He was represented to me as a stranger newly come to England, and had a mind to see my house and gardens. He was introduced, and brought there accordingly by Mr. Layer, and I received him civilly. In process of time he told me the history of his life thus; that he was not a Spanish, but an Irishman, and, my lord, I think, educated in the camp under an uncle of his. He told, that when he was a young man, he had taken a great many liberties.

Serj. *Pengelly.* My lord, we humbly apprehend, this evidence is not proper to be given: If they have any particular questions to ask of my lord, let the counsel propose them, or ask my lord North and Grey to the character of Mr. Lynch in general: But thus to give an account (by way of repetition of a discourse between lord North and Grey and Mr. Lynch, where he was born, and where he was bred up) and to give a history of particular facts, is what they ought not to do.

Lord *North* and *Grey.* I am glad to be interrupted by that worthy gentleman. I only desire to know to what points you would be pleased to ask me.

L. C. J. Mr. Hungerford, you know what the rule of practice and evidence is, when objections are made to the credit and reputation of the witness; you cannot charge him with particular offences: For if that were to be allowed, it would be impossible for a man to defend himself. You are not to examine to the particular facts to charge the reputation of any witness; but only in general you are to ask what his character and reputation is.

Mr. *Hungerford.* My lord North and Grey is an entire stranger to him: but he was only going to tell you what account Lynch gave of himself.

L. C. J. That is very well. Consider, if that is not the same as if you were to charge him with particular facts. You say, he himself, when he was with that noble lord at his house, gave a character of himself much to his disadvantage. It is impossible for him in such a case to give an answer to it; therefore by the rule of evidence you cannot do it.

Mr. *Ketelbey.* If that noble lord was going to give any character of him which he heard from other persons it might alter the case. But surely when the character he gives of him is grounded upon what he said of himself, is not that much stronger than the hearsay of others, the talk of strangers? The character he had of this person is from himself; therefore we hope he shall give it in evidence.

Mr. *Hungerford.* If they won't let this noble lord enter into a relation of what character this Lynch gave of himself, we cannot help it.

L. C. J. You know, if there be any objections to him, to his general character, he can answer them:* but if objections are grounded on particular charges of his being a base, an

* See Vol. 13, p. 187; and Peake's Law of Evidence, ch. 3, art. Witnesses, s. 2, art. General Character, as there referred to.

infamous, and an ill man, not having any notice of this, it is impossible for him to defend himself.

If you will ask my lord North and Grey what general character he gave of himself, you may.

Mr. *Hungerford.* If my brief be true, the whole Ten Commandments have been broken by him.

L. C. J. Very well; and so you charge him with the breach of the Ten Commandments, and he must let it go for fact, because he cannot have an opportunity of defending himself.

Mr. *Ketelbey.* What character in general did he give of himself to your lordship?

Lord *North* and *Grey.* I do not know how to answer it, as to his giving a general character of himself. Thus much I must say, I saw him twice. The first time he was brought down by the gentleman at the bar; the second time he came, he was ill received; and I ordered it should be told him, that in case he designed to stay there, that I had no room or any lodging for him. As to particular things, I do not care to speak of them. I should be very sorry to say it when it was said in my company, and under my roof.

Mr. *Hungerford.* We will not press it any farther.

Lord *North* and *Grey.* I must beg your lordship's leave, if the gentlemen have no farther to say to me, and your lordship have no farther commands, that I may return to my prison.

Mr. *Hungerford.* I hope you will make way for my lord North and Grey through the crowd: and, if your lordship pleases, we will go on with our evidence.

George Talbot sworn.

Mr. *Hungerford.* Pray, give my lord and the jury an account of what you know of Mr. Lynch.—Mr. Stephen Lynch, what character hath he?

Talbot. Why, Sir, the character I know of him is this, that he is a man that hath been so extravagant, that he hath brought himself to necessity by it; kept very infamous company.

Mr. *Hungerford.* What character hath he? Hath he the character of an honest man?

Talbot. He hath a very indifferent sort of a character.

Mr. *Hungerford.* Hath he a good or a bad character?

Talbot. The character I can hear of him is a very bad character.

Mr. *Ketelbey.* We do not ask you as to the particulars of his life and conversation, but only the general character he hath, and the opinion the world hath of him; whether he hath the character of an honest man, and is a person fit to be believed?

Talbot. The character I have had of him, is, that he is not to be believed.

Att. Gen. How long have you known him?

Talbot. I have not seen him these six years.

Att. Gen. What is your employment?

Talbot. I am not able to follow any thing now.

Att. Gen. He says he hath not seen him these six years: how long ago was your acquaintance with him?

Talbot. I met him at the Canaries, when I was coming from thence, which is about six years ago; I know nothing of him since, but what I have heard of him.

Att. Gen. Have you ever had any dealings with him?

Talbot. I never had much dealings with him; what I have had have been very little to my advantage.

Mr. *Ketelbey.* If Mr. Attorney desires the particulars——

Mr. *Hungerford.* We conform ourselves to your lordship's rule, to ask only to the general character of the man: but if Mr. Attorney will enter into particulars, we will join issue with him, and go into that method too.

Att. Gen. I asked him how long he had known him, he says he had not seen him these six years.

Mr. *Ketelbey.* Have you had a character of him?

Talbot. The worst I could ever hear of any person; I know nothing of myself, but what I have heard from others.

Mr. *Winchman* sworn.

Mr. *Hungerford.* Pray, give my lord and the jury an account of what you know of this Stephen Lynch.

Winchman. I knew this gentleman fourteen years ago in the island of the Canaries, there he kept an Irish gentleman company, one Wilson; he was then well-beloved by every body: the gentleman took him into his company, and afterwards he grew extravagant and the gentleman turned him out of his company.

Mr. *Hungerford.* Is he accounted an honest man, or a knave?

Winchman. I will not trust him for any thing.

Mr. *Hungerford.* You say you will not trust him for any thing?—*Winchman.* No.

Mr. *Hungerford.* The wiser you.

Mr. *Ketelbey.* Is he a man to be credited? Can you believe what he says?

Winchman. I think I would not believe him.

Mr. *Ketelbey.* You are right.

James Darcy sworn.

Mr. *Ketelbey.* How long have you known Mr. Stephen Lynch?

Darcy. About a twelve-month.

Mr. *Ketelbey.* I do not ask you as to his particular life and conversation, but in general what is his character, is he a man to be believed or credited?

Darcy. I do not take it that he is.

Att. Gen. Where did you know him?

Darcy. I first knew him last winter in London.

Mr. *Hungerford.* Is Mr. George Fitzgerald

there? My lord, here is a complaint made that the witnesses can't be let in.

L. C. J. They must be let in.

Sol. Gen. Who made the complaint?

Mr. Hungerford. A gentleman here in court.

Sol. Gen. It is the business of your solicitors to take care that way be made for your witnesses.

Mr. Hungerford. It is not the business of your witnesses to stop the passage.

Sol. Gen. They don't stop the passage.

Mr. Hungerford. No; what is your busy colonel there [pointing to colonel Hucke] a doing?

Serj. Cheshire. We must stay here half an hour for every witness.

Mr. Fitzgerald did not appear, then Mr. *John Blake* was sworn.

Mr. Hungerford. Mr. Blake, do you know Stephen Lynch?—*Blake.* Yes, Sir.

Mr. Hungerford. Pray, give my lord and the jury an account of him, whether he is a person to be believed or not?

Blake. I heard a very ill character of him about six years ago. I have heard that he married two wives.

Mr. Hungerford. Is he to be believed or no?

Blake. I know nothing but by hearsay, I believe he is not to be believed, because I have heard such a base character of him.

Mr. *Collins* sworn.

Mr. Hungerford. Will you give my lord and the jury an account of what you know of Stephen Lynch.

Collins. Sir, I never exchanged a word with him.

Mr. Hungerford. What character hath he?

Collins. A very infamous character. I know him by eye-sight only; I have seen him upon the Exchange of London.

Prisoner. Is he a person to be credited or not?

Collins. No, I believe not.

Mr. *French* sworn.

Mr. Hungerford. Do you know Stephen Lynch?

French. I know him by eye-sight.

Mr. Hungerford. What character hath he, is he a person to be believed upon his oath?

French. I don't think he is.

Mr. Hungerford. How long have you known him?

French. Six or eight months.

Mr. *Kelley* and Mr. *Blake* sworn.

Mr. Ketelbey. Mr. Kelley, how long have you known Stephen Lynch?

Kelley. I believe I have known him since the beginning or middle of April last.

Mr. Ketelbey. What is his character, is it an honourable character?

Kelley. I never heard any give him a character that was not very vile.

Mr. Ketelbey. Mr. Blake, how long have you known Stephen Lynch?

Blake. Sir, I never had any acquaintance with him, but I have heard he hath a vile character.

Mr. Hungerford. Have you had any discourse about this trial, have you heard any thing said by Lynch himself about the matter that is now in judgment before this court?

Blake. There was one Mr. French, a particular acquaintance with Lynch; I met Mr. French, hearing he was of the same inn with me, (I belong to the Middle Temple) and he told me he wanted money.

Sol. Gen. You know what he told you is not evidence.

Blake. Saith he, there is one Mr. Lynch owes me a good deal of money, and I want to go and see him, and I have no mind to go there by myself. Next day I consented to go along with him, as thinking there could be no danger in that: when we came to him, I suspect, says Mr. Lynch, that you come for some money that I owe you. Upon that, he desired him to sit down, and told the gentleman he was sorry he had disappointed him. Then he begun to talk of my lord North and Grey, and my lord Orrery, and Mr. Layer I believe I shall hang him; but as to my lord North and Grey, and my lord Orrery, I know nothing of them: I know nothing more of Mr. Layer, but what I had from him himself. Some words passed between him and me, and talking of my lord Townshend, he said my lord Townshend was of a morose temper, but my lord Carteret was of a better temper.

Mr. Ketelbey. Speak to the purpose; I desire to know what you can say of Mr. Lynch's character?

Blake. I don't know any thing of Lynch, but that he is of an infamous character.

Mr. Ketelbey. What did he say of Mr. Layer?

Blake. He said he would hang him.

Mr. Ketelbey. Did he say any thing about the vileness of the plot, or why or how far he thought it his duty to discover such villainy?

Blake. No, I don't know of any such thing, I heard him say, my circumstances are very poor; and the motive that induced him to do this, was to save the lives of a thousand people.

Mr. Hungerford. Did he speak any thing of getting money?

Blake. No, I cannot say any such thing.

L. C. J. That is not a fair question.

Blake. I can inform your lordship more; saith he, I was forced to do this; but if I had got off from this affair; I would fight any dozen people in England to come off from it.

Sol. Gen. Where do you live, Sir? Do you live in the Middle-Temple?

Blake. No; I live at Mrs. Ireland's in Portugal-street.

Mr. Hungerford. In the conversation you had with Lynch, was there talk of any money he was to have?

Sol. Gen. You asked him that question before, and was told it was not a fair question.

Mr. *Hungerford.* I think I did not. Mr. Darcy, what do you know more of Mr. Lynch?

Darcy. Sir, I went to see Mr. Lynch on account of some money which I lent him, and when he was taken up in Manchester-court I went to see him; there he received me civilly, I took him aside and asked him for my money. I told him so freely, and asked him how he got money and several fine clothes which he had? he told me a lady used to come twice or thrice a week to visit him, and this lady was the mistress or daughter of one of the chief ministers of England; he said this woman——

L. C. J. You must not put him in this way.

Mr. *Ketelbey.* Mr. Blake, have you given an account of the character of this Lynch? I only ask you the general character.

Blake. I have told you already.

Prisoner. I have two or three more to the same purpose.

Terry sworn.

Prisoner. How long have you known Lynch?

Terry. Seven years.

Prisoner. Hath he the character of an honest man?

Terry. He hath the character of being a loose young fellow; that is all I know of him.

Prisoner. Is his character good or bad?

Terry. His character is loose.

Mr. *Hamilton* sworn.

Prisoner. Do you know this Stephen Lynch?

Hamilton. Yes.

Prisoner. What character is he of, is he to be believed?

Hamilton. No, I believe not; I was cautious of keeping him company; I believe him to be of a vile, infamous character, that will do or swear any thing.

Mr. *Hungerford.* We leave the character of this Lynch here, with the weight of the blemishes charged upon him by our witnesses, to the consideration of the jury.

There is another of the witnesses, Mr. Plunkett, to whose character we shall likewise examine. We shall call a witness or two to that matter, and then we shall close.

Mr. *Thomas Brown* sworn.

Mr. *Ketelbey.* Do you know Plunkett?

Brown. Yes, I have known him these ten years.

Mr. *Ketelbey.* What is his general character?

Brown. He hath but an indifferent character.

Mr. *Ketelbey.* Is he a man to be believed?

Brown. No, my lord, I don't believe he is.

Mr. *Keating* sworn.

Mr. *Ketelbey.* Have you known Mr. Plunkett, and how long?

Keating. I never had any knowledge of him before the beginning of July last.

Mr. *Ketelbey.* What character and reputation hath he? Hath he a good or an ill character?

Keating. I will tell you: about the beginning of July last a man that owed me some money on a note of his hand——

Sol. Gen. My lord, we must oppose the going into particulars; they know they are confined to examine as to his general character only.

Mr. *Hungerford.* But if the gentleman will follow some of your examples, and introduce himself by prefaces, we can't help it.

L. C. J. To a general question you must give a general answer.

Keating. The knowledge I have had of him, I never knew any thing tolerable in his favour; I never heard a good character of him.

Mr. *Ketelbey.* Did you ever hear a bad one?

Keating. Yes, a very bad one, that he was a drunken, idle fellow, always kept company with other women.

Mr. *Ketelbey.* And from the character you have had of him, do you think there is any credit to be given to him?

Keating. No, I don't think there is.

Mr. *Hungerford.* My lord, here we produce a man of quality, sir Daniel O'Carroll.

Sir *Daniel O'Carroll* sworn.

Mr. *Hungerford.* Do you know Plunkett?

Sir *Daniel.* Yes, Sir, I do.

Mr. *Hungerford.* Pray, what is his general character?

Sir *Daniel.* I can give no good one of him; for it is a mighty bad character he hath; he caused his colonel to be brought to town to be examined——

Mr. *Ketelbey.* I only ask you in general, don't enter into the particulars: I only ask in general, from the character he hath in the world, do you look upon him as a competent witness to be believed against another man?

Sir *Daniel.* I would not take his evidence to hang a dog.

Mr. *Hungerford.* And here he attempts to hang a Protestant!

Mr. *Thomas Spelman* sworn.

Mr. *Ketelbey.* Do you know this Plunkett, and how long have you known him?

Spelman. I have known him seven or eight years.

Mr. *Ketelbey.* What is his general character in his life and conversation?

Spelman. I never knew any ill done by him.

Mr. *Ketelbey.* What is his character?

Spelman. I can't give any character of a man I don't know. All I know of him, is about a dispute between him and sir Daniel Carroll about a horse, and his desiring the lawyer to sue sir Daniel.

Mr. *Hungerford.* Did he not say something before that?

Spelman. He said, the lawyer he employed would do him justice.

Att. Gen. You say you don't know any ill character of him?

Spelman. No, I don't.

Edward Barnewell sworn.

Mr. *Hungerford.* Do you know this Plunkett, what is his character?

Barnewell. Pray, let me tell you; I have been examined twice upon this account. The first time that I brought Plunkett to be acquainted with Mr. Layer, Mr. Layer's man brought me word and said, Mr. Layer had his goods seized wrongfully; upon that I sent Plunkett to the Savoy, to have two soldiers from thence; and I said, go to Mr. Layer's house, there are some bailiffs that have wrongfully seized his goods, you must go and turn them out. He did go with the soldiers, and turned the bailiffs out of the house; upon which Mr. Layer gave him half-a-crown: after this Mr. Plunkett had no friend but me; and he came and pressed me, and desired me to apply to sir Daniel Carroll, for some money he said he owed him for a horse. I told him I thought it was wrong to press sir Daniel upon that account. Then about eight months ago he came to me, and said he had met Mr. Layer in Lincoln's-inn-fields, and that Mr. Layer did not know him; I told him, says he, I am one of those that served him at such a time, and that he had given me half-a-crown, and that then Mr. Layer remembered him. This is all I know; I'm sworn, and will tell the truth.

Mr. *Hungerford.* Is he a man as may be believed, even upon his oath, or not?

Barnewell. I must tell you, that I found him in so many mistakes about his own wife, that, by God, I would not take his word for a halfpenny.

Mr. *Hungerford.* This contradicts what Mr. Plunkett says passed between him and Mr. Layer in Lincoln's-inn-fields, with respect to the giving him half-a-crown, it seems to be for former service.

L. C. J. How doth it? I am to learn again. Plunkett swore, that he came with him under a gate-way, and there, after he had talked with him, he gave him half-a-crown. This gentleman owns he gave it to him for the service he had done at some distance of time before.

Mr. *Hungerford.* Go on, but don't swear by God any more.

Barnewell. I am a soldier, a man of honour, of 80 years of age, and would not do an ill thing for the world. Gentlemen, as I have been sent for by the ministry, and examined in the council, it hath been said, Mr. Plunkett hath made me write a letter to his own captain; and these men were obliged to give in bail, and he would pay for the charges.

Mr. *Ketelbey.* What did Mr. Plunkett say to you, in relation to what passed between you and Mr. Layer?

Barnewell. He told me Mr. Layer gave him half-a-crown, in kindness for the service he had formerly done him, in turning the officers out of his house.

Mr. *Matthew Phylips* sworn.

Prisoner. Do you know Plunkett?

Phylips. Yes.

Prisoner. What character hath he?

Phylips. I think, by what I have known by him, he is not to be believed.

Prisoner. Is that his general character?

Phylips. It is; that every body gives him that knows him.

Alexander Phylips sworn.

Mr. *Ketelbey.* Do you know Plunkett?

Phylips. Yes.

Mr. *Ketelbey.* How long have you known him?

Phylips. I have known him about eleven weeks.

Mr. *Ketelbey.* What character hath he?

L. C. J. I never heard the like; when you give the character of a man, you give that character by men that have not known him above eleven or twelve weeks.

Mr. *Hungerford.* Have you ever had any dealing with him?

Phylips. No, not I; but my uncle hath.

L. C. J. Most of your witnesses have known him but a little time, seven weeks, eight weeks, eleven weeks, &c. It would almost make a man suspect, that some people have been set up on purpose to give an ill character of these people on this occasion. To talk of seven or eight weeks acquaintance!

Mr. *Hungerford.* That man is crowded in I don't know how, but sir Daniel Carroll is tumbled about and cannot get out; sir Daniel is a gentleman of merit, and as such hath been distinguished by the government, and ought to be treated a little better.

Patrick Mahone sworn.

Mr. *Ket.* What character hath Mr. Plunkett?

Mahone. I have known Mr. Plunkett several years, and that he was an idle, broken man, and a great liar, and not to be believed.

Mr. *Hungerford.* He would lye before and behind, I think you say?

Mahone. Yes, he did.

Mr. *Ket.* Do you think he is to be credited, if he comes to give testimony against a person?

Mahone. Upon my word I think he is not, by what he told me; because I have found him to lye backwards and forwards.

Mrs. *Child* sworn.

Mr. *Ket.* Mrs. Child, pray have you had any discourse lately with Mr. Plunkett the serjeant?

Child. I never had any discourse with him but that day my husband was confined, when I run to look for Mr. Plunkett's wife, and Plunkett's wife was not at home, but was gone to see her husband at the messengers; I went thither; Mr. Plunkett hearing I was at the door, he desired that I should come in. Saith he, Mrs. Child, how comes it that your husband doth not come to see me? You know, says I, upon what account my husband absents himself. Why, he is not taken up yet? Yes, says

I, he is, and confined upon your account. He takes me by the hand, he takes me into the coal-hole, and take notice what I say to you, and get to your husband and tell him quickly. And he told me that he took my husband to a lawyer that was going to pay off the 18*l.* that sir Daniel Carroll owed him, and the lawyer would not see him, and so they came away together.

Att. Gen. She speaks much to the purpose: for she confirms what Mr. Plunkett swore.

Mr. *Ket.* What did Plunkett say?

Child. He said, he was going to get a settlement for life.

Mr. *Ket.* What was he to get a settlement for?

Child. For what he said of Mr. Layer; a story he had told me of my husband.

L. C. J. You have called a great many witnesses to the disreputation of Lynch and Plunkett, to say they have generally ill characters, and are vile, infamous fellows, and not to be believed; and there is the substance of all your evidence if you stay here till to-morrow morning.

Alice Dunn sworn.

Mr. *Ket.* Do you know what character Plunkett hath?

Dunn. His character I had from himself, that he lived with another man's wife.

Mr. *Ket.* Hath he a good or bad character?

Dunn. He hath a bad character.

Mr. *Ket.* Is he to be believed?

Dunn. No, he is not to be believed.

John Richmond sworn.

Mr. *Ket.* Here, Richmond, have you seen Plunkett lately?—*Richmond.* No.

Mr. *Ket.* How long is it ago since you saw him?

Richmond. About three weeks ago and more.

Mr. *Ket.* What discourse had you with Plunkett at that time when you saw him?

Richmond. Plunkett asked me if I was a servant of Mr. Layer's? I said, I was; and in discourse I asked him if he had ever received any money of Mr. Layer for the use of the Pretender? He kneeled down upon his knees, and struck himself upon his breast, and said, he never had received any money of Mr. Layer for the use of the Pretender in his life-time.

Mr. *Ket.* How long is this? Is it three weeks?

Richmond. I believe it is about six weeks ago.

Mr. *Ket.* Who was present besides you?

Richmond. There was nobody else in the room.

L. C. J. I would be glad to know, that he never received any money for the use of the Pretender, what do you mean by that?

Richmond. He kneeled down upon his knees, and said, he wished he might be damned if *ever* he received any money for the use of the Pretender.

Mr. *Hungerford.* Your lordship may remember Plunkett swore, that Layer gave him half a crown at one time, and other money at several other times; and now he solemnly swears upon his bended knees that he never received any money for the use of the Pretender, that is, upon his account.

L. C. J. When you are drawing consequences from the expressions, consider what those expressions are: He solemnly protested that he never received any money for the use of the Pretender. It doth not appear that he did; nor did he say that he did. Well, go on.

Mr. *Ket.* My lord, we will leave it here as to Plunkett: We will beg leave to call some witnesses as to Mrs. Mason's character.

Mrs. *Clayton* sworn.

Mr. *Ket.* Do you know Mrs. Mason, or Mrs. Buda, or Mrs. Herbert, or what do you call her?

Clayton. I know her by all those names: Buda is the name she always used to go by; she hath gone by the name of Mason, and Bevan, and Herbert.

Mr. *Ket.* What is her character and reputation?—*Clayton.* Very indifferent.

Mr. *Ket.* Is it bad or good?

Clayton. Very bad.

Mr. *Ket.* Have you had any talk with her at any time about sir John Meers and his man Thomas?

Clayton. I have heard her say that——

Sol. Gen. They are asking what the witness hath heard Mrs. Mason say at any time about sir John Meers and his man, which being to a particular fact, surely is not a proper question.

Mr. *Hungerford.* What have you heard her say about any papers?

Clayton. I see her have a printed book: I used to go often where Mrs. Mason lodged; and going one day there I saw a gentleman sitting, which was Mr. Layer: He had sent a porter for Mrs. Mason. When she came, says he, the parliament-man I was speaking of is not provided of the 300*l.* I have a good mind to lend it him.

Mr. *Hungerford.* Pray, how does Mrs. Mason get her living?

Clayton. By deluding young women, and carrying them about for money.

Mr. *Hungerford.* That is to say a bawd, is it not?—*Clayton.* Yes.

Mr. *Ket.* Did you hear of any rewards she was to have by coming here?

Clayton. She said she was to be paid or else she would not do it.

L. C. J. What do you mean? You have been so often admonished by the Court; but it signifies nothing. You are charging Mrs. Mason with being a bawd, when you ought only to enquire as to her general character.

Mr. *Ketelbey.* I asked you generally the question, whether she had a good or a bad character?

Clayton. I did answer that question.

L. C. J. At this rate the most innocent persons may be branded as the most infamous villains; and it is impossible for them to defend themselves.

Mrs. *Peirce* sworn.

Mr. *Hungerford.* What do you know of this Mrs. Mason?

Peirce. I know I lodged in the house where she did lodge.

Mr. *Hungerford.* What character hath she; a good one or a bad one?

Peirce. A very indifferent one.

Prisoner. Is she to be believed or credited?

Peirce. No, she is not to be credited.

Mr. *Hungerford.* Had she a good reputation or an infamous one?

Peirce. She hath a bad reputation.

Serj. *Pengelly.* You have seen Mr. Layer there?—*Peirce.* Yes.

Mrs. *Wilkinson* sworn.

Mr. *Ketelbey.* Do you know this Mrs. Mason?

Wilkinson. I don't know Mrs. Mason; but I know Mrs. Bevan.

Mr. *Ketelbey.* What character hath she?

Wilkinson. I know her to be a vile woman, and doth not care what she says, or what she doth.

Mr. *Ketelbey.* Is that her general character?

Wilkinson. Always since I have known her.

Mr. *Ketelbey.* How long is that?

Wilkinson. About two years.

Mr. *Dyer* sworn.

Mr. *Ketelbey.* Mr. Dyer, Do you know Mrs. Mason?—*Dyer.* I know one Bevan.

Mr. *Ketelbey.* How long have you known her?

Dyer. She lived with me 13 or 14 years ago.

Mr. *Ketelbey.* What was her character then?

Dyer. She robbed my shop, and I sent her to Bridewell.

Mr. *Ketelbey.* What is her character and reputation now?

L. C. J. I desire you to forbear this irregular practice.

Mr. *Hungerford.* Is this woman to be credited or not?—*Dyer.* I know nothing of that.

Mrs. *Baskett* sworn.

Prisoner. Had you any discourse with Mrs. Mason?—*Baskett.* No, Sir, I don't know her.

Prisoner. Had you any discourse with her?

Baskett. I don't know her.

Prisoner. Nor Mrs. Buda?

Baskett. No, I don't know her.

Prisoner. Nor Mrs. Bevan?

Baskett. I don't know her at all.

Prisoner. Do you know Mr. Lynch? Have you seen him lately?

Baskett. I saw him last night.

Prisoner. Did you hear him say what reward he was to have for swearing against me?

L. C. J. That must not be.

Prisoner. Did you not hear him say he was to have 500*l.* for swearing against me?

L. C. J. We have a compassion for you, and therefore bear this from you, which we would not from any body else.

Sol. Gen. My lord, this is not to be endured. The prisoner turns about to the jury, and tells them that Lynch said he was to have 500*l.* a year.

Mr. *Hungerford.* I believe the gentleman that sat next to him did not hear him.

Mr. *Wearg.* My lord, I did hear him say to the jury, that Lynch said he was to have 500*l.* a year.

L. C. J. I must tell you, if you did but consider of what little consequence it would be to you, you would not do it: when you thought fit to make him your confidant, carry him to the Green Man with you, and to my lord North and Grey's; and there he was entertained courteously by him; and do you come now to brand him with being an ill man?

Prisoner. Lynch says himself, that he did not know me till June last; and how could I have so much friendship for him on so short an acquaintance?

L. C. J. Then for this woman, if you would do service to yourself, prove the packets are not under your seal, and that you did not deliver them to her with your own hand; prove something of that, and these proofs will be of more service to you than ten thousand of these witnesses.

Prisoner. My lord, if I was admitted to prove, I can make it appear it is all a sham and a forgery.

Mr. *Hungerford.* It was never proved to be his seal.

L. C. J. You are mistaken: the woman swore it was his seal, and the officers swore they were under the seals when they seized them; and it is proved now to be his seal, for the seal is visible.

Prisoner. How do they prove it to be my seal? My lord, it is not my seal. I desire major Barnewell may be asked as to this woman's character.

Barnewell. I know her: she is a vile woman; she had like to have cheated me of 1,500*l.*

Prisoner. You are only asked as to her character in general. Is she a woman to be credited, or not?

Barnewell. No, she is not.

Mr. *Ketelbey.* I hope you are satisfied with this general answer.

Mr. *Hungerford.* They won't let us go into particulars; that the course of practice won't allow.

Mr. *Ketelbey.* It is impossible for us to direct the answers to the questions.

Mr. *Lebatt* sworn.

Prisoner. Mr. Lebatt, pray, give my lord and the jury a general account of this Mrs. Buda, or Mrs. Mason, whether she ought to be credited or not, or gain credit?

Lebatt. No: she would take any body's life away for the value of a farthing.

Mr. *Hungerford.* Now, my lord, we will close our evidence as to the character of these witnesses against the prisoner at the bar: we hope we have proved their characters to be so

infamous, as no jury upon earth will believe them. Here is this to be observed——

Prisoner. I beg pardon; here is mighty talk of my arms: I am so fortunate as to have a person here that will give you an account of them, and how they came to be brought thither.

Mr. *Bowers* sworn.

Mr. *Ketelbey.* What trade are you of?

Bowers. A gunsmith.

Mr. *Ketelbey.* Did you make any fuzees?

Prisoner. No; pray, let me ask him: pray, give my lord and the jury an account of a blunderbuss, a fuzee, a carbine, and pistols; what you know of them. Did not you owe me six pound on a note under your hand?

Bowers. My lord, about five or six months ago, Mr. Layer had a law suit for me: I sold him a pair of pistols, and a little after I sold him another pair. Mr. Layer had them for a debt: he had in his house two guns. I promised Mr. Beunet a gun when the cause was over, instead of money. I gave him one of those guns: there is another gun, and a musket which Mr. Layer had of me.

Mr. Layer had a note of mine for six pound, which I owed him: I importuned him to take a carbine for a man to ride with, and a blunderbuss for his house, in order to set off this debt; and I brought him them when he was going into the country: I brought him some powder, and I brought him three dozen and a half of cartridges.

Prisoner. Did I order you to bring them, or did you bring them of your own head?

Bowers. You bid me bring a dozen and a half, or two dozen; and I brought three dozen and a half: the reason was, that I might shorten my own debt.

Mr. *Raynham* sworn.

Prisoner. Pray, will you give my lord and the jury an account of the piece of arms I had of you, and for what reason.

Raynham. I went with him to one Mr. Prichard's in Friday-street, there was a musket in his compting-house; he said he would dispose of it: Mr. Layer asked him his price; he said he would have fifty shillings for it. Mr. Layer said, that was too much; says he, you shall have a trial of it; and if your sister carries her cause against Mr. Watson, you shall give me 50*s.* for it.

Prisoner. Did he put it on me, or did I desire it?

Raynham. You asked him what it was worth, and whether he would dispose of it?

Prisoner. Did not he say several times that he wanted to dispose of it, and desired me to take it on those terms?

Raynham. Yes: he said on that condition that your sister got her cause you should have it, and give him 50*s.* for it.

Mr. *Samuel Steward* sworn.

Prisoner. Mr. Steward, only give my lord and the jury an account whether or no I was not intrusted with things of great value, and what occasion I might have for a few arms; whether you don't know of money put out on mortgages?

Steward. Yes, to the value of 30 or 40,000*l.* within these two years.

Prisoner. Don't you think it reasonable as to these arms, that I should have them in my house to guard my house?

Steward. I thought it very reasonable.

Mr. *Hungerford.* My lord, we have done with examining witnesses, to the credit of the witnesses produced against the prisoner; and leave that matter to the consideration of the jury.

Mr. *Ketelbey.* Pray, Mr. Steward, do you look upon that paper they call A Scheme, with a French motto upon it. Before you look upon that paper, I ask you if you are acquainted with the hand-writing of Mr. Layer?

Steward. Yes, very well.

Mr. *Ketelbey.* How long have you been acquainted with his hand-writing?

Steward. Two years and a half.

Mr. *Ketelbey.* Have you at any time seen him write?—*Steward.* Yes, a thousand times.

Mr. *Ketelbey.* Do you believe that to be his hand?

Steward. I do not believe it to be his hand.

Prisoner. Is it like the character I write?

Steward. Not at all: you write a shorter charaoter; this is a long one.

Mr. *Bennet* sworn.

Mr. *Ketelbey.* Have you been acquainted with the hand-writing of Mr. Layer?

Bennet. I have been very well acquainted with the hand-writing of Mr. Layer.

Mr. *Ketelbey.* You have seen him write?

Bennet. Very often, a thousand and a thousand times.

Mr. *Ketelbey.* Look upon that paper: see if you believe that to be his hand-writing?

Bennet. No, my lord, I do not believe that to be his hand-writing: I never saw him write a hand like it in my life. I don't think it to be his own hand-writing at all; I never saw him write such a hand as this.

Att Gen. Shew him that paper. [Which was a paper seized among the prisoner's papers in the great bundle.] Look on that paper, and give my lord and the jury an account if you know whose hand-writing it is.

Bennet. I believe it is my own hand-writing.

Att. Gen. By whose direction did you write it?—*Bennet.* By Mr. Layer's direction.

Att. Gen. For what purpose was it writ?

Bennet. I can't remember.

Att. Gen. Did you write this for Mr. Layer?

Bennet. I believe I did; but I can't tell what particular reason I writ it for.

Att. Gen. Now, my lord, here is one of the papers that were found in the bundle, in which the lists were found, proved to be writ by Mr. Layer's clerk by his direction.

Serj. *Cheshire.* He is positive as to its not being his master's hand-writing; yet as to his own, he owns it.

Cl. of the Cr. It is a list of names.

Mr. *Ketelbey.* Before you read it, what did he say?

Att. Gen. My lord, he said it was his hand.

Cl. of the Cr. It is part of a jury between Layer and one Watson.

Att. Gen. This was found amongst his papers that were sealed up. It was taken in that bundle where the lists were.

Mr. *Ketelbey.* We submit it to your lordship and the jury: we apprehend we have proved this Scheme not to belong to Mr. Layer. We have called two witnesses that have known him many years, and have seen him write a great many times, and that they verily believe it not to be his hand-writing. We don't know how it is possible to leave it on a better foot. Therefore, my lord, we shall leave it to your lordship's direction, and the consideration of the jury.

Mr. *Hungerford.* My lord, all that I would now observe, is, that this gentleman is indicted for high treason. The main of the charge against him is, that he was concerned in designing to raise an insurrection. How that appears to be proved, I have spoke to already; but this must be allowed, that whatsoever desolation and ill consequences might now have ensued, there hath been no blood shed, no armies raised, or invasions attempted: and I think upon such an evidence that comes not up to the charge in the indictment, the blood of this gentleman ought not to be reached: at least we humbly hope it shall not.

Prisoner. My lord, as to Lynch, it appears our going down into Essex was merely accidental: when we came to the Green Man, we did not stay there three quarters of an hour; and he says we went down twice in the time. All this mighty business, this publishing a declaration, talking of an insurrection, which is the treason, and laid as an overt act in Essex; all this was done before dinner by his own owning. It was not three quarters of an hour from the time we went in, till the time we came out. We went on to my lord North and Grey's; and when he was there, he is asked, if there was any discourse there about any such design? He says, there was nothing said of it there. Is it possible when such a design was on foot, he and I alone should go together to the Green Man, and thoroughly recapitulate the affair; which when we came to my lord North and Grey's nothing should be said of it?

When we come to Plunkett, he saith that he became acquainted with me first of all, by reason of some goods that were seized in a house in Queen-street; that he never saw me till five years after this in Lincoln's-inn-fields. Plunkett did not at first know me: we looking upon one another, then he renewed his acquaintance with me, and told me of the former service he had done me; and thereupon I gave him half a crown, which he said was given him by me to list men into the Pretender's service. He confessed, as I proved by major Barnewell, that I gave it him for former services. As to the thirteen shillings, he was asked, whether he did not come to borrow such a sum of money of me? He said he did; it was in order to release major Barnewell out of the Marshalsea. Being asked whether he was not acquainted with sir Daniel Carroll, and whether there was not some difference about a horse in Spain between them? He said there was, and that he came to advise with me, whether he could recover the money of Daniel Carroll? Is it not natural that the guinea he talks of might be another man's money, that was told him by one Jeffreys was sent to him by me: he talks to him as to that guinea, when he comes to be asked, whether it was not purely out of kindness and charity that I did lend him that guinea? He doth not deny it; and now would insinuate that it was given him to list men for the Pretender. From the improbability of the thing, from his own owning, no person could believe him. I believe there are ninety-nine out of a hundred that cannot believe one word that either Lynch or Plunkett swore.

Then the next matter they talk of, they produce a scheme: how hard and difficult was it to give any evidence that so it should be read; and I humbly apprehend it did not strictly amount to legal evidence. Mr. Doyley, he said, he knew my hand 14 or 15 years ago, and that he hath received letters from me about 5 years ago, and hath compared this scheme with those letters; and therefore he believes it to be my hand. When he comes to be asked, whether he hath those letters here with which he compared this scheme? No, I have them not here: yet chiefly his belief was that it was my handwriting, by comparing these letters and this scheme together. This amounts to nothing more, when it comes strictly to be considered, than only a similitude of hands, and surely similitude of hand, with submission, is not proof in criminal cases: and when it amounts to no more, it ought not to be received.

Here is, say they, a circumstance that what Lynch and Plunkett swore must be true, because here was a scheme for an insurrection. In this very scheme or paper, as I took notice of, not one man is mentioned by name in it; only soldiers to be had here, the Tower to be seized, the Bank and the Exchange to be seized, and the world to be turned upside down; but by whom? There is no time mentioned, there is no date to it. This thing, if it be such a scheme, if it had been written by me, which I absolutely deny that it was writ by me, it doth not appear but that it was written several years ago. When they come to ask those gentlemen, the under-secretaries, if this be so remarkable that they lay the whole stress upon this paper, whether I acknowledged it to be mine, they could not say I owned it to be mine. One of the lords lays his finger on a paper, and saith, Don't you say this about arms? Which

cumstance which falls in with the written Scheme; for you observed that one George Wilson is there mentioned as the person who was to manage the serjeants, and receive orders from the principal officer.

At this meeting Lynch tells you they talked over the business, and drank good success to the enterprize. When they parted, he complained to the prisoner of the long delay. Upon which Mr. Layer told him there was a nobleman at the head of the design, who had full power and authority from the Pretender (whom he called king,) who would lose no fit opportunity to put it in execution. He did not name this nobleman, but told Lynch that he should be presented to him in due time, and also receive orders from him to seize my lord Cadogan.

Gentlemen, it will be very material for you to fix this circumstance in your memories, and to connect it with the evidence which comes afterwards, and what was done in consequence of this meeting.

For after Layer had thus declared that there was a nobleman at the head of the conspiracy, and Lynch should be presented to him in due time, then it follows that upon the 24th of August, the day the bishop of Rochester was committed to the Tower, which appears by the evidence to be the time of their next meeting, Mr. Layer proposed to Lynch to ride out to take the air, which was agreed upon for the next day.

In that journey the prisoner persuaded Lynch to carry arms, because, as he then declared, "He had that about him which he would not lose for all the world." Upon the road Layer told Lynch they were to go to my lord North and Grey's, and when they were got pretty near the Green Man at Laytonstone in Essex, it was thought to be too late to go on to dine at lord North and Grey's; and therefore the prisoner proposed to stop at the Green Man to take a dinner.

At this place the overt-acts of high-treason committed in Essex, which we were so much called upon to make out, do arise. During their stay here, the witness gives you an account that they discoursed of the whole project of the insurrection, the means of effecting it, the uneasiness that was in the nation, and in general all the several matters they had consulted of before; and after they had done this he tells you, Mr. Layer the prisoner proposed to him that detestable and shocking design of seizing the sacred person of the king, which he sometimes called "sending a strong guard to take care of"——at other times to secure, the king's person.

He tells you farther, that Mr. Layer pulled out of his pocket a manuscript paper, and delivered it to the witness in part folded down, and he read that part of it which was left open. That this paper contained a declaration, with a recital, that my lord Cadogan was then actually in their custody: That there were in it invitations to the people to rise in arms and repair to their party: encouragements to the soldiers to revolt, with an offer of three guineas to every horseman and serjeant, two guineas to every corporal, and one guinea to every common soldier, to be paid immediately on their joining the party; and a promise of further rewards. Lynch acquaints you, that the prisoner talked of this declaration being of his own composing, and that from the discourse which passed between them, and the appearance of the paper, he apprehended it to be of the prisoner's hand-writing.

My lord, after this declaration had been thus produced, the prisoner took it back again, put it into his pocket, and kept it; and therefore the paper itself being in his custody, we were properly admitted to prove the contents of it by parole evidence; and I apprehend if we had no further proof of these overt-acts which were done in Essex, this alone is fully sufficient to maintain the indictment to be regularly and properly found in that county.

From the Green Man they went on to Epping, to my lord North and Grey's, with whom it is admitted the witness was not at all acquainted, and consequently could not of himself have any particular reason for going thither, but it appears to have been upon the motion of the prisoner. When they came to the lord North and Grey's house, Lynch tells you that the prisoner introduced him to his lordship; and this brings back to one's memory, and makes it impossible not to recollect what the prisoner had told Lynch at their last meeting, in time next preceding this journey, that there was a great man at the head of this design, to whom he should be presented in due time.

Gentlemen, after this Lynch went a second time to my lord North and Grey's at Epping, and there he found the prisoner at the bar; indeed he does not own to you that any thing passed between them relating to this conspiracy in the presence of my lord North; but at that place Lynch, in conversation with Mr. Layer, expressed an uneasiness that the affair was delayed; but Layer bid him be easy, for it might be done sooner than he expected.

Gentlemen, this is the substance of the evidence of what passed in Essex. But the witness tells you he had afterwards several conversations with Mr. Layer; and when he expressed his concernment at the delay of putting the design in execution, Layer told him he was so bent upon the success of it, that rather than it should fail, he would be a second Massinello: This was represented as a ridiculous expression by one of the counsel for the prisoner: but we have all heard what confusions were raised by that profligate fellow in the kingdom of Naples; and it is plain, that was the example the prisoner referred to by this expression.

Mr. Lynch was cross-examined by the counsel for the prisoner, with as much liberty as they thought fit to use; but I did not observe that his evidence was at all weakened, I think I may say, it was rather confirmed by

it, since it was upon their own questions he gave his reasons how Layer came to deal so openly and unguardedly with him at first sight. And those reasons were strong; for it is not improbable, if Murphey and Layer were engaged in a treasonable design, that one of them should have confidence in a third person on so strong recommendation from the other.

The next witness is Matthew Plunkett, and I apprehend, notwithstanding every thing that hath been said against his testimony, that it is rather strengthened, as to the facts sworn by him, than weakened by the evidence for the prisoner. He tells you, his first acquaintance with Mr. Layer was about five years since, and had its rise upon this occasion: the goods in the house where the prisoner then lodged, being taken in execution, (whether his own goods or not, is not at all material) one major Barnewell, who has been examined for the prisoner, was employed to procure persons to rescue those goods; Barnewell applied to this witness, who got two grenadiers, that were let in at a private door by Mr. Layer's clerk. They did their work, drove out the officers, and rescued the goods; and for this service Mr. Layer rewards them with a crown and some brandy. Since that, it appears he has been employed on other messages between major Barnewell and the prisoner; and in what manner Plunkett is supported in these circumstances, and by consequence in the rest of his testimony, by major Barnewell himself, who has been produced to discredit him, I shall observe when I come to consider the evidence for the prisoner.

But the witness having given you this account of the introduction to the correspondence, tells you, that in July last, James Plunkett came to him from the prisoner, enquired privately what acquaintance he had amongst the soldiers, and desired him to meet the prisoner at the Italian coffee-house in Russel-court; but he did not meet him there, not having money nor inclination to go to a coffee-house. He gives you an account, that on the Sunday following, returning from St. Andrew's church, as he was going over Lincoln's-inn-fields, Mr. Layer met him. Plunkett had forgotten Layer's face; but Layer remembered him, and asked him if he knew him; to which Plunkett answering that he did not, the prisoner told him his name, which made him recollect. Layer then enquired if James Plunkett had not been with the witness, to desire him to come to the Italian coffee-house, a few nights before; and having made himself known by these circumstances, took Plunkett into a private place. There they had a long conversation, in which Layer began with declaring how well assured he was of Plunkett's good affections to the Pretender, and said he wanted some old soldiers, such as Plunkett was, that would head and discipline a mob, for they had other men enough. Plunkett said, he did know several old soldiers, but he hesitated a little about the Pretender's being a Papist. The prisoner, to take off the force of that scruple, answered, "We had as good have a Papist for our king as a Lutheran, I don't know what difference there is between them" (that is) between a Popish king and a Protestant one——An important difference! which I wish with all my soul, were not too much forgotten, or perhaps, too little valued, by many amongst us, who are not so frank in declaring as the prisoner.

Mr. Layer proceeded to excite the witness to join in his treason, by a false representation of the state of the nation, and particularly of the injustice as he called it, which was done to old soldiers who had served abroad; a topic most likely to captivate an old serjeant. After this preface, he informed the witness there was to be an insurrection; and Plunkett asking who was the promoter of the design, told him it was my lord North and Grey, whom he commended as a fine general; and then he went through a sort of list of several other persons of consideration. The witness has declared that he knew several soldiers, said, he could procure five-and-twenty, whereupon Mr. Layer desired he would make a list of their names, and the places of their lodgings, that they might be in readiness upon call; and at parting gave him half a crown.

After they had thus talked of the conspiracy, there followed a very observable passage; for the prisoner declared that the design had been put in execution some time ago, if some person had not discovered it to the French ambassador, who writ of it to the regent, and so it was notified to the king. However even this apprehension of a discovery did not terrify them, for the project was to go on. The late duke of Ormond was to come in a single ship, and general Dillon in another, and they were to bring others with them; which you take notice falls in with the evidence of Lynch, that Layer declared to him that they should not want encouragement or assistance from abroad, when once they had made a beginning here.

The next intercourse between the prisoner and Plunkett was not personal, but by the means of one Jeffreys, a non-juring clergyman.

Gentlemen, you observed that the prisoner told Plunkett at parting, that he would send a messenger to him with money; and afterwards at his own house, on the morning he went out of town for Norfolk, that he had left a guinea with a non-juring clergyman to give him to do service with;—and, says Layer, whilst I am abroad, you may be sure I shall not be idle. Accordingly Mr. Jeffreys came within a few days after, and appears to be that clergyman; for he said, he came from Mr. Layer. He tells you, they discoursed on the old subject, and Jeffreys desired he would get men in readiness, and said he had several other places to go to on the same errand. Jeffreys gave the witness no money at that time, but came a second time, and gave him only half a guinea, which he said Layer had sent him for his encouragement. Besides this, he tells you Layer gave him a crown at the Castle-tavern, in

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After they had thus talked of the conspiracy, there followed a very observable passage; for the prisoner declared that the design had been put in execution some time ago, if some person had not discovered it to the French ambassador, who writ of it to the regent, and so it was notified to the king. However even this apprehension of a discovery did not terrify them, for the project was to go on. The late duke of Ormond was to come in a single ship, and general Dillon in another, and they were to bring others with them; which you take notice falls in with the evidence of Lynch, that Layer declared to him that they should not want encouragement or assistance from abroad, when once they had made a beginning here.

The next intercourse between the prisoner and Plunkett was not personal, but by the means of one Jeffreys, a non-juring clergyman.

Gentlemen, you observed that the prisoner told Plunkett at parting, that he would send a messenger to him with money; and afterwards at his own house, on the morning he went out of town for Norfolk, that he had left a guinea with a non-juring clergyman to give him to do service with;—and, says Layer, whilst I am abroad, you may be sure I shall not be idle. Accordingly Mr. Jeffreys came within a few days after, and appears to be that clergyman; for he said, he came from Mr. Layer. He tells you, they discoursed on the old subject, and Jeffreys desired he would get men in readiness, and said he had several other places to go to on the same errand. Jeffreys gave the witness no money at that time, but came a second time, and gave him only half a guinea, which he said Layer had sent him for his encouragement. Besides this, he tells you Layer gave him a crown at the Castle-tavern, in

Drury-lane, expressly to encourage him to list men for the Pretender. Upon the prisoner's return to town, a letter was sent by Jeffreys to the witness, to desire him to go to the prisoner's house; and when he came there, the prisoner gave him a guinea with his own hand. There were several other conversations, several things said to keep Plunkett firm to the design, and many groundless and malicious slanders cast by the prisoner upon his majesty's government; and in all those conversations Plunkett tells you, the prisoner always stiled the Pretender king. It would be tedious particularly to repeat all these things to you; but there is one thing I can't help observing, before I go off from this part of our evidence, I mean, that Plunkett told you more than once, that he was to procure five-and-twenty old soldiers for the service. Now that happens to be exactly the number which is assigned to each of the eight serjeants in the prisoner's own Scheme, which was produced to you, and is a strong circumstance in support of this witness's testimony.

Gentlemen, I have gone through the evidence of these witnesses, and I beg leave to say they are, within the meaning and intention of the law, two witnesses to prove the high treason charged upon the prisoner; and it happens in this case, that they make out all the particular overt acts alleged in the indictment.

Both Lynch and Plunkett prove repeated consultations to levy war, to bring in the Pretender, and the actual listing of men; and Lynch alone proves the publishing the treasonable Declaration, and that part of the design, which nobody can hear without the utmost indignation, the seizing his majesty's person. From henceforth I apprehend I may take it, that the charge is proved; though in truth we have gone a great deal farther in order to put the testimony of these witnesses beyond all doubt, to deliver them from all possible objections, and to demonstrate to you the nature and extensiveness of this black conspiracy.

The next head of evidence, is that of the papers; and notwithstanding the little cavils which have been urged against them, those papers are fully proved to be the prisoner's, and by him delivered to Mrs. Mason. It stands thus; Mrs. Mason swears, that the prisoner delivered these papers to her in two packets, as things of great consequence, sealed up with his own seal, which seal is now remaining and appears on the covers. That she locked them up safe in her trunk till they were seized by the messengers, and out of that trunk the messengers took them. That she set her mark upon each particular paper, which appears to be the same mark which by way of experiment they would have her to make in court; and she swears, that these are the very same papers which the prisoner delivered to her with his own hands. The two messengers gave you an account, that they seized these papers at Mrs. Mason's lodgings, on the 29th day of September last; that they took the two packets out of the trunk, the same seal being then upon the covers, and that Mrs. Mason was by, and marked them in their presence; that they likewise put their marks upon, and never delivered them out of their custody till they had so done. Indeed, Turner says he left them in the hands of his fellow-messenger, Spear, during the little time he went for Mr. Stanyan; but Spear swears they received no manner of alteration during that space; and upon the whole, they swear them to be the same papers which they took out of the trunk.

Upon this evidence, we apprehend we were entitled to have read the papers, without giving any farther account of them.

I did mention to your lordship the case of my lord Preston, which was not so strong; for he lying, together with Ashton, in the hold of the ship, upon the ballast, a bundle of papers lay between them; Ashton took them up, and put them in his bosom, and there they were seized; but being found together with my lord Preston, those papers, though the very overt acts of the treason laid in the indictment, were read against him upon that proof only. Indeed, after they had been read, the king's counsel, in order to give a farther strength to one or two particular papers, entered into a proof of their being my lord Preston's own hand-writing.

The first paper we called for was the Scheme, a regular plan of this conspiracy; and, gentlemen, in order to prevent any pretence of hardship, before we read it, we called a witness to prove this Scheme to be the prisoner's hand-writing: it was Mr. Doyley, who swears he verily believes it to be his hand. He gives you the reasons of his belief; that the prisoner lived with him as a clerk two or three years, not whilst he was a boy, but after he had served some time with another master, had been used to business, and gained a settled hand; and during that time he frequently saw him write. To support this farther, he tells you, that he had transacted business for Mr. Layer, as his agent, until about four or five years ago, and had received several letters from him, which he was sure were his, because he (Mr. Doyley) had done the business required to be done by those letters, and Mr. Layer had paid him for it; that he had compared his paper called The Scheme, with those letters; that the character of the letters agreed with what the prisoner wrote when he was clerk to him; and the character of the Scheme with that of the letters.

But, gentlemen, this Scheme is an evidence so considerable in itself, and of that general consequence to this whole cause, that we went farther yet, and, not out of any necessity, but in order to give you abundant satisfaction, we proved it to be written by the prisoner from his own confession. Mr. Stanyan told you, that the prisoner upon his examination before the lords of the committee of council, where he was present, and took notes, confessed this Scheme to be of his hand-writing. The counsel for the prisoner objected, this question wa

not directly asked him (Is this your hand?) and consequently he did not say, It is my hand. It is true, that does not appear; can there be no other evidence of a confession, but such direct questions and answers. Upon the examination, the prisoner was asked, whether he knew of any arms lodged in Westminster? He told the lords he knew of no arms being lodged. Thereupon this paper was shewed him, and he was asked, "How came you to write in this Scheme of your own hand-writing, that there were arms lodged?" To this he made answer it was a mistake, I should have writ arms that should be lodged. Can any thing be more plain than this? It was so evident that the paper was written by him, that it was taken for granted, and called his hand-writing in the very terms of the question; probably he had confessed it before the clerks were called in. If it had not been his hand, would not the natural answer have been, Why do you ask me about what is written in that paper? I know nothing of it, it is not my hand-writing; but instead of that he admits it without the least difficulty, and takes upon him to tell the lords what he intended to have written.

The gentlemen on the other side endeavoured to avoid the force of this evidence, by this ingenious turn—"I should have written arms that should be lodged," (that is) "If I had writ it, I should have written arms that should be lodged." But I desire to be informed, if he did not write it, how came he to know any thing about it? How could he take upon him to say it was a mistake? Whose mistake? He admits it to be his own. So that this observation comes to nothing, and this Scheme, after all their objections, stands confessed, as well as proved, to be Mr. Layer's hand-writing.

Upon the foundation of all this proof, which I beg leave to observe does support all the other papers found in the two packets, the Scheme was read, and when it was read, it required your strictest attention; for in that paper appears a regular design, formed for the total destruction of this government, to be executed in the city of London, the capital of the kingdom. This, if there was no more, shews a just foundation for what was lately declared to us in a solemn manner, that if this conspiracy had not been happily detected, we should before now have seen that city involved in blood and confusion; such appears to be the plain intent of it. The most profligate of the people were to have arms put into their hands, in order to subdue and pillage the better sort.

In the first place, the Tower was to be seized, and a certain officer expected to be upon the guard that day, who should be their friend, and let in the party who were to make themselves masters of that garrison. The Royal-Exchange, being in the heart of the city, was to be the head-quarters of the general; and another party was to plunder the Bank. So that to give us a taste of the views of these conspirators, spoil and rapine were not, in the execution of their design, to have been accidental, proceeding from the fury of action, the common excuse for such outrages, but a premeditated avowed part of the measures concerted before-hand.

The artillery was next to have been seized, and a stratagem is contrived to effect it: and to crown all, his majesty himself was to be made their prisoner: Horrid resolution! coloured indeed with the name of securing his royal person from the insults of the mob; but how thin a pretence this is, I need not spend time to explain to you, since the writer of the Scheme himself has called it but a pretence.

The Scheme goes on, and the conspirators being sensible how much our future hopes, as well as our present happiness, depend on the Protestant Succession in his majesty's family, the next step to be taken, is to get his royal highness the prince into their power,—a prince at Richmond, described under a cant name, but the meaning of it is plain. When all this appears, how can the counsel for the prisoner object, that there is not sufficient foundation to accuse their client directly of compassing the death of the king? Could this have ended in any thing else? Or can any one dream, that either of those precious lives, I have now mentioned, could have been preserved in the hands of such miscreants?

Gentlemen, having observed thus much, in short, upon the nature of the Scheme, it will be proper to take notice to you, that as this paper, thus fully proved, is of itself a strong evidence, so it greatly corroborates and supports the testimony of the two witnesses, as to every one of the overt-acts charged in the indictment, and tallies with it throughout.

This is true as to the general design, but appears most remarkably in some of the particular facts. The project laid down in the Scheme for seizing the Tower is exactly the same with what Lynch told you the prisoner communicated to him whilst they were viewing my lord Cadogan's house: "That the officer who should be upon duty there that day might be their friend, and favour the design." In like manner, the circumstance of eight serjeants being to have in readiness 25 men a-piece, falls in with what Plunkett the serjeant swore, that he was to procure that number of old soldiers to engage in the enterprize.

But there is one observation arising from a circumstance of time, which is extremely strong in confirmation of the testimony of the witnesses, and shews manifestly, that the account they give, must arise only from their knowledge of the truth of the fact, and could not possibly be framed and modelled to answer these papers; it is this, that Mr. Layer, who was taken up on the information of Lynch and Plunkett, was actually in the custody of a messenger, and made his escape on the 19th day of September last; but these papers, which thus fall in with, and support the facts they swear, were not seized, as the two messengers

acquaint you, till the 29th of that month; which is near ten days after.

Gentlemen, one would have thought there had been no occasion to go any farther——

My lord, I desire that the prisoner may not talk to the jury, whilst I am observing upon the evidence.

L. C. J. Sir, you must not do it.

Prisoner. My lord, I did not speak to the jury.

Mr. *Hungerford* offers to speak.

L. C. J. I tell you, Mr. Hungerford, it is not right; Mr. Layer hath made his observations to the jury, and made his nods, and sometimes I have seen his lips move.

Prisoner. You can't tell what I said.

Sol. Gen. I saw you turn about to the jury, and saw your lips move at the same time. My lord, I desire he may stand up, and look towards the Court, which is his proper posture.

Gentlemen, I was saying, that after this Scheme had been produced, one would have thought the king's counsel might safely have rested it here. Can any body doubt of this treason, and of the prisoner's part in it, when he himself hath thought fit to record the conspiracy with his own hand? However, we did not leave it here: but in order to give you entire satisfaction how deeply this gentleman was engaged, what a large share he had taken upon him, and how dangerous and extensive this conspiracy was, we read several other papers. They consist of lists of the names of several persons, many of them officers of the guards, and of the army; some of them general lists, others particular: for what purpose these must have been made up or procured, by a person engaged in such a design, is extremely plain.

My lord, it hath been said with great justice, that this is not to be so understood, as to bring any imputation on the gentlemen named in these lists. I dare say, that by far the greater number, if not all of them, are persons of the utmost fidelity to his majesty, and zeal for his service. But men engaged in such designs, who are plotting to overturn a government, must weigh and calculate the strength of that government, as well as their own. They must know who is to be relied upon on one side as well as the other, and consider who are fit to be applied to, and who not; therefore they must take an account of persons concerning whom they have no hopes, as well as those of whom they have hopes. Thus it was in my lord Preston's case; he had got lists of ships, and of the king's officers and troops: The meaning of it was well understood upon his trial; the Court understood it, and the jury understood it, that he had procured them, in order to the better information of himself and his accomplices in the conduct of that plot.

Gentlemen, in the next place, several letters were read to you, which were also found amongst the papers deposited by the prisoner with Mrs. Mason. You will remember on this occasion, what Mrs. Mason swore, that the prisoner hath some time gone by the name of Fountaine, and gave directions to her that if any letters came directed to Mr. Fountaine, she should take them in, and deliver them to him. She tells you, a letter did come directed to Mr. Fountaine; that she delivered it to the prisoner, who opened it, read it, and kept it as a letter for him; which was an express owning of that name, and several of the letters now produced are directed by the name of Fountaine.

There was found, together with the letters, a cypher, that is, a list of feigned names for persons and things, which has been in part read; and in this cypher the cant expressions made use of in the letters are contained, and the persons and things signified by them decyphered in plain words. Sir William Ellis (a follower of the Pretender, with whom it appears the prisoner had settled a correspondence) is there described by the name of Eustace; and the first letter that was read, is subscribed with that name and directed to James Fountaine, esq. In that letter sir William Ellis tells him "he is entirely of his opinion as to the method of carrying on the manufactory, and the procuring of good workmen, is the first step to be made." Manufactory wanted some explanation, but it is fully cleared up by the word—'workmen,' which follows. For look into the cypher, and 'workmen' stands for 'soldiers;' so that the 'manufactory' must be such as it was fit for 'soldiers' to work in. He goes on and advises him particularly "to get some of the ablest of Mrs. Barbara Smith's." Barbara in the cypher means the 'army;' so the advice amounts to this, that in order to raise a rebellion, he should seduce some of the ablest soldiers of the king's army. A counsel, which is now made very plain, the prisoner has endeavoured punctually to follow. To encourage him in this, he tells him, "that it will be very agreeable to all concerned—particularly to Mr. Atkins." Now, according to the prisoner's own explanation in this cypher, Atkins is one of the feigned names for the Pretender.

The next letter is dated the 11th of July last, subscribed N. C. and acknowledges the receipt of a letter dated the 8th of May, with another letter inclosed, which the writer says, was presently delivered to Mr. St. John, who took it extreme kindly: Look into the cypher, and it appears that Mr. St. John is one of the fictitious names for the Pretender; so that this letter shews, that the person to whom it was written, corresponded immediately with the Pretender himself. But it seems Mr. St. John did not well understand what related to Mr. Burford, which the letter-writer hopes may be soon cleared by an answer. What this was which wanted explanation, is in the dark; but so much we know that in the prisoner's cypher, Burford stands for the earl of Orrery.

There is another letter dated the 27th of May, in which the writer tells Mr. Layer, that their friend had his letter of the 22d of March, and took very kindly the care he had taken of his little concerns. Who is meant by that

friend, whose concerns were the prisoner's care, does not certainly appear; but it, is very natural to think, it is the same person before called Atkins and St. John. However, it seems their friend was again at a loss about certain names Burford, Steel, Digby, the little soldier, and Simons, which were not in his rental.

The word 'rental' in Mr. Layer's cypher, is the cant term for a cypher; and in that likewise are to be found the other words, which his friend did not then understand; particularly Simons, which is put there for the lord North and Grey. But if that did not appear by the cypher, yet the description which follows, would be enough to convince every man in his private judgment who was meant by it—"He is of the North, a grey haired ancient man," cant expressions plainly, which take in both the titles of that noble lord. The letter-writer adds, that "their friend (the same whose concerns were taken care of) very well remembers this person, and hath a very particular esteem and value for him, and that he is (in their phrase) a very good tenant, and a very honest man."

Gentlemen, some of the papers were read to you of a more extraordinary nature than even these letters; I mean the notes signed James R. with the Pretender's own hand. These are not only one evidence of the plot, but a part of the means by which it was to be effected; for they appear to be receipts framed with blanks, to be filled up with sums of money as occasion offered, with a promise of repayment with interest. These were some of the ways and means for raising supplies out of the pockets of such people as should be found weak and silly, as well as wicked enough, to advance money on such a shadow of a security, for so flagitious a purpose. But they ask us, who proves the subscription to be the Pretender's hand? I answer, it is certain that is not material; but if it were, we have it sufficiently from the prisoner himself. The account he hath thought fit to give of them, you have heard from Mr. Delafaye; that he had written to his correspondent sir William Ellis, that if sir William could send him over some blank receipts under the king's own hand (so he called the Pretender) he believed they might be made use of for the carrying on his cause: that his intention was to have tried his friends, and to have raised money on these receipts. This shews the prisoner received them as being signed with the Pretender's own hand; and shews likewise the use intended to be made of them; and it appears he had the confidence to justify himself in this practice, by the like method having been taken by king Charles the second, just before his restoration.

My lord, this is the substance of our proof as to the papers and the observations which have occurred to me upon them; and I will presume to say, with great submission to your lordship's better judgment and observation, that upon this evidence, taken together with the testimony of the two witnesses, we might safely have trusted our cause to your lordship's direction, and the consciences of the jury. But we went farther still, not because we wanted it to convict the prisoner, for we had already done sufficient for that purpose, but in order to give abundant satisfaction, not only to the gentlemen of the jury, but to the whole world, of the reality of this conspiracy in general, as well as of this man's part in it; that they may see and be convinced of the just grounds there were for this prosecution, and for the treatment the prisoner has met with. For this reason it was, we called Mr. Stanyan and Mr. Delafaye to give an account of his confession, upon his examination before the lords of the committee of council; and I apprehend, we were properly and agreeably to the rules of law, let into that evidence. We have had the judgment of the Court upon that point, therefore I won't trouble your lordship with any authorities for it, but rely upon that as the best authority.

Gentlemen, the relation Mr. Delafaye and Mr. Stanyan gave, was, that the prisoner declared to the lords of the council that he had been at Rome in the year 1721, and staid there some time, and had several conferences with the Pretender in person: that in one of those conferences he asked for some token or credential, in order to give him a credit with the party when he returned to England; that it was not at first granted, but afterwards he put his request into this shape, that the Pretender's wife (the queen he called her) would be pleased to stand god-mother to the prisoner's child. Some time was taken to consider of this proposition, and then word was brought by col. Hay to the prisoner, that she would stand god-mother to the child; and it was agreed, that the late duchess of Ormond should represent her. Afterwards the Pretender consented to be the godfather, but Layer was to procure some person to be his proxy.

What was then agreed upon was followed by the fact. When the prisoner returned home, and the child was to be christened, he applied to my lord Orrery to represent the Pretender, and to the late duchess of Ormond, to represent the princess Sobieski. The latter complied, but my lord Orrery declined the service; and thereupon the prisoner made application to my lord North and Grey, who was pleased to accept it. The child was christened at Chelsea, and my lord North and Grey stood as proxy for the Pretender, and the late duchess of Ormond for the princess Sobieski; and the prisoner said, they both were privy that they represented those persons.

The prisoner's confession likewise verifies every material circumstance of Lynch's evidence, as to what passed in the county of Essex. That he was at the Green Man with one Lynch, and there shewed him the heads of a declaration which he had drawn: that they went from thence to my lord North and Grey's, and there the prisoner presented the witness to his lordship as a very honest man, and a person fit to be employed in seizing my lord Cadogan; and afterwards he said, as a person fit to

be employed in an insurrection. That the prisoner and Lynch lay at my lord's house that night, dined with him at his own table the next day; and that the healths of the Pretender, his wife, and child, were drank by them after dinner, and the same healths were drank, and (if I understood it right) begun by that noble lord himself.

There was a farther circumstance sworn by Mr. Stanyan, in which he is confirmed by col. Huske, that at the time Mr. Layer was apprehended, a considerable quantity of arms, and about 50 cartridges, made up with ball, and fitted for the use of soldiers, were found in his house: and the prisoner being asked, upon his examination, what he did with them? He said, they were for his use, in case there should happen any disturbance in the nation.

The prisoner entered into an examination of the gunsmith, how he came by these arms; but that is not at all material: in his house they were found, and he has confessed they were intended for his use in case of a disturbance in the nation. What disturbance was there likely to happen, but from himself and his accomplices?

Gentlemen, the prisoner's escape out of the messenger's custody is another strong circumstance. In order to fly from justice, he ventured to get out of a window two stories high, and had the fortune to meet with a sculler, which carried him cross the water into Southwark. When the witness first endeavoured to stop him, it appears he was in the utmost concern; begged of him for God's sake to let him go, pretending it was an arrest; and then he pulled out of his pocket a great many guineas, and bid the witness take what he pleased, so he would but let him go; but the messenger pursued him pretty close, and he was retaken.

Gentlemen, this is a very material piece of evidence to shew the guilt of the prisoner. The law of England supposeth guilt from flight, and though it was said, that any man in Mr. Layer's condition would have done the same thing, if he could; that can be true only in this sense, that any man in his condition, as to the consciousness of his own guilt, would have done it; but an innocent person would never have brought that imputation upon himself, by endeavouring to escape.

This is the substance of the whole evidence which has been given for the king against the prisoner at the bar, as well as I can recollect it; and, gentlemen, I persuade myself, when you have considered it seriously, you will be satisfied that it makes good every part of the indictment. But be that never so strong, the prisoner ought to be heard against it, and have a full opportunity of making his defence: for if he hath a good defence, either in point of law or fact, to take off the force of this evidence, God forbid that he should suffer by it.

The prisoner entered upon his defence, and his counsel were pleased to set out with making some observations upon the case, as we had left it.

My lord, they first make an objection in point of law, that the treason, for which the prisoner is indicted, is compassing the death of the king, and one of the overt-acts laid is only a consultation to levy war, which they insist is not an overt-act of that species of treason, nor indeed any treason at all, because the words of the statute, 25 Edw. 3, import a war actually levied; and for the sense of those words, which nobody ever doubted of, some ancient French writers were quoted.

My lord, I apprehend this objection, if it be one, is rather to the indictment than to the evidence, of which they know they may properly take advantage in arrest of judgment. But with great submission to your lordship, there is no weight in it either way. One cannot help being a little surprized to hear it mentioned, after that point has been established by so many resolutions, which at the same time they tell us they are aware of; and in the very last case of high treason, which was in this court, I mean that of Kerr, Dorrel, and Gordon, it was solemnly determined by the unanimous opinion of all the judges, that a consultation to levy war, in order to destroy or depose the king, is an overt-act of high-treason, in compassing his death. This was the received doctrine before the Revolution, and it has been adhered to ever since; and though the act of reversal of my lord Russel's attainder has been mentioned, yet if that were looked into, I dare say no declaration will be found in it, contrary to this determination. But they go farther, and object that here is no overt-act at all proved to be done in the county of Essex; and if so, then whatsoever proof there may be of facts done in Middlesex, that will go for nothing, and the prisoner must be acquitted upon this indictment. And, my lord, so far I agree with them, that unless we have proved one overt-act at least to be done in Essex, we cannot maintain this indictment.*

In support of this objection they would have it, that the only transaction in Essex is what passed at the Green Man, and the whole of that is reduced singly to the publishing the declaration: and that, say they, is not legally proved, and if well proved, yet it is no overt-act of treason. As to the proof, they object that the paper itself is not produced, and parole evidence of the contents of a writing is not to be admitted.

But, my lord, I have given this an answer already, by observing that the prisoner took back the paper, and kept it; so that the writing itself being proved to be in the custody of the party, we were entitled within the ordinary rule, to give parole evidence of the contents. But, my lord, this declaration was a part of the treasonable consultation then had; and sure I am, it would be the finest invention to secure certain impunity to plotters that ever was thought of, if, instead of discoursing, the

* See p. 164, and East's Pl. Cr. as there cited.

consultation shall be carried on by papers handed from one to another, and nobody can be convicted, because the paper is not to be found. As to that part of their objection, that it is no overt act of treason, one of the gentlemen thought fit to treat it in a ludicrous manner. 'Twas only reading a piece of paper, suppose they had sung a ballad. That gentleman will pardon me, if I say, those expressions did not become this occasion. An accusation of high-treason, which highly concerns the king and his government, is an affair of a serious nature; and if he does but reflect upon the contents of that declaration, which the witness related, he cannot think it a matter to be sported with.

Mr. Ketelbey was pleased to say, that this could be no overt act of treason, because it was but publishing a libel. But surely, that is very extraordinary. Publishing of a paper may amount to one crime or another, according to the subject-matter of that paper; and can it be a question at this time of day, whether the publishing a declaration or a book containing arguments, or offering rewards directly to stir up the king's subjects to rise in rebellion against him, be high-treason? The treasonable intent in this case cannot be doubted, and it is as certain that the publication is an act; what is there then wanting to make it treason? But, my lord, this has also been adjudged, and therefore I won't argue it.

My lord, I have said thus much about the declaration for the sake of following the gentlemen, who are counsel for the prisoner, in their arguments; but after all, their foundation, which is a supposition that there are no other overt-acts proved in Essex, besides this of the declaration, entirely fails them; for your lordship will inform the jury, that Lynch deposed that whilst they staid at the Green Man they did more than "talk a little politics," they consulted about the project of an insurrection, and the prisoner there actually proposed to him (besides what was contained in the paper) the design of seizing the king's person, which are two other overt acts laid in the indictment.

Upon this, another objection was raised by Mr. Ketelbey, which, if it holds, will go to the whole; and that is, that we have but one witness, Lynch alone, to the facts in Essex; and this indictment must fail, unless there are two witnesses to some or other of the overt-acts in the county where the indictment is laid.

But, my lord, that is not now to be disputed. The law is clearly settled, that on an indictment for high treason, in compassing the king's death, if several overt-acts are laid, and some of those overt acts are proved by one witness to be done in the county where the party is indicted, and others of them are proved by another witness to have been committed in a different county, that evidence is sufficient to maintain the indictment; they are two witnesses of the same species of treason within the meaning of the law.* So it was expressly resolved by all the judges of the King's-bench, in the Case of sir Henry Vane, which is reported in Kelynge 15, and that has been since followed by a current of authorities; the Case of the Five Jesuits, the opinion of the judges delivered to the Lords upon the trial of my lord Stafford, 32 Car. 2, and other cases.

My lord, as this is established by authorities, so the reason and necessity of the thing is strong, because otherwise treasonable consultations might easily be carried on in such a manner that nobody could be convicted of them.

It would be but to lay the scene upon the confines of several counties, and take care not to consult with any two persons in the same county; then there could not be two witnesses, and all would be safe.

I have done with their objections in point of law, and shall now endeavour to give some answer to their observations upon the fact. And, gentlemen, I think the whole of those observations may be reduced to one head, which is, that it is highly improbable, that what the witnesses have sworn should be true. But upon that, before I give particular answers to what they have offered, I beg leave to say in general that though in a doubtful case, where there is any balancing in the proof, the improbability of the thing is a consideration of great weight, yet where there is plain and positive evidence on one side, not weakened by any counter evidence on the other side, the objection of improbability can be of little force.

But to consider this improbability. They say, it is very strange, that Mr. Layer should be engaged in so dangerous an undertaking with such persons as have sworn themselves to be his accomplices. To this, I say, it is always strange, that men should venture to trust one another with such dangerous secrets; but certain it is they often do; and as to the witnesses in this case, they are proved by the prisoner's own evidence, to be persons with whom he thought fit to hold a correspondence. How this great confidence was at last created between them, has been accounted for by the witnesses themselves, in a very natural and probable way, of which I have already taken notice.

Mr. Ketelbey insisted much upon the improbability of Plunkett's evidence, in those parts of it which concern James Plunkett and Jeffreys the non-juring-parson. That it is not credible that those two men, whom Plunkett admits to be absolute strangers to him, should at first sight open themselves with so great freedom, to a fellow of his degree on a subject of treason. But that will receive this answer: James Plunkett and Jeffreys were, as appears clearly from the circumstances, in the confidence of Layer. Layer had a confidence in Matthew Plunkett the witness, on the recommendation of major Barnewell; and by means of Layer, both James Plunkett and Jeffreys might be induced to trust him. And thus the chain of the correspondence is made complete.

Another objection was made to Plunkett,

* See East's Pl. Cr. ch. 2, s. 65.

that he had been guilty of a flat contradiction in his evidence. That he first swore, Jeffreys told him his name upon his first coming to him, and afterwards that he did not know his name till he received the letter from him about the prisoner's being come to town. But that observation was grounded upon a mistake; for what Plunkett said was, that Jeffreys did tell him his surname at first, but that he did not know his Christian name till he received the letter, which is very consistent.

But the counsel for the prisoner were well aware, that their observations upon the witnesses could be of little effect, if the paper called the Scheme found credit; and therefore in the next place they attacked that as being incredible; they represent it as ridiculous and foolish—the scheme of a madman, which could never have taken place.

Gentlemen, as to this observation, the Scheme is indeed such an one as I hope in God could never take place any where, but in the heads of those that framed it. But with great submission, that is no objection to the credibility of it, provided it be proved. For the consideration is not, how it now appears to you or to me, who look upon it in a different light, and on the contrary principles from theirs; but the proper consideration is, what the conspirators themselves, with regard to the views and principles they went upon, might think of it. And, gentlemen, in that light examine it, go through the several articles of it, compare them together, and you will find them consistent and coincident; all the parts answering to one another. Every quarter of the town is provided for, dispositions made of certain numbers of men, and care taken to preserve the communication between them by watch-words agreed upon for that purpose. These things make it plain, that it was fully considered by those who drew it, and framed not at random, but upon computation of a force of which they thought themselves assured. And what, though it should be admitted to be extravagant, and not likely to succeed? If that should be given way to, as a certain objection against a plot's finding credit after it is detected, I am afraid it would be a sure method to make such plots succeed, or at least to secure the authors of them from punishment. Do but intermix some absurd, extravagant parts in the plan of the conspiracy, and then according to this reasoning it is below notice, and must be suffered to go on, or if a stop be put to its progress, yet it is incredible, and nobody must be believed to be guilty of it.

But, gentlemen, whatever difficulties may be raised against particular parts of the written Scheme, yet upon the grounds and suppositions which the prisoner and his accomplices proceeded on, their general design might appear very feasible to themselves. For it is plain they had a dependence, however ill-founded, upon discontents raised in the minds of the people, and on corrupting great numbers of the army, which would have diminished the strength of the government, and added to their own; and after they had made a beginning here, it is proved that they expected assistance from abroad.

The next thing to be considered, is the testimony of the prisoner's witnesses: and, gentlemen, you observe that they have scarce called any witnesses to contradict the facts contained in our evidence, for the people of the house at the Green Man say nothing to the purpose; but all their evidence is applied to the character and credit of the witnesses produced for the king.

As to that, I must observe to you, that it is not to be expected that conspiracies and traitorous machinations of this kind should be proved by persons of the best characters. It is necessary from the nature of the thing, that they should be proved by those who have been privy to them, and such persons cannot possibly be of characters absolutely unblemished. Therefore, to say that such witnesses are not to be believed, is in effect to say, that no evidence of a plot is ever to be believed, which surely is an argument that proves too much.

The first witness they called on this head was my lord North and Grey. I am heartily sorry to see his lordship here in his present condition upon this occasion; the rather, because it obliges me to observe, that here are circumstances proved which affect him; I will carry it no farther, but some circumstances are proved in this cause which do affect him. But what is his evidence? His lordship was called to impeach the character of Lynch; and however he may impeach his character, I am sure he supports his credit as to the facts sworn by him. The account his lordship gave, was, that the prisoner brought Lynch to his house at Epping, introduced Lynch to him, that he was never acquainted with him before; but upon Mr. Layer's introduction, received him civilly; and that Lynch came thither a second time.

Now, these are the very facts Lynch swore to, and consequently so far my lord supports him. But then, as to his character, his lordship is pleased to say, that the first time Lynch was there, he gave him a history of his life; and in that gave so vile an account of himself, that when he came a second time, his lordship would not give him a lodging in his house. This, I think, was the whole of my lord's testimony; and I cannot help remarking upon it, that his lordship gave no account at all of any business, which either the prisoner or Lynch had with him, nor of any particular occasion upon which the former introduced the latter to him. That was a matter within his lordship's own knowledge.

There is another thing which is a little surprizing; and that is, that Mr. Lynch being an absolute stranger, as is confessed, to this noble lord, having the honour to be introduced by a friend to a person of his great quality, should have so little regard to his friend, or to the opinion that noble lord was to conceive of him, as at the first interview to take so odd a

way of being recommended, and give a most vile, infamous character of himself. This is somewhat out of the ordinary course; but you are told that so it was.

As to the other witnesses to Lynch's credit, notwithstanding their number, I apprehend their evidence, when duly considered, will have little weight. They were most of them going to enter into particular facts; but the Court, agreeably to the constant course of evidence, overruled them in it; and that you, gentlemen of the jury, may be satisfied no hardship was done by this to the prisoner, I will mention the reason of it. The reason why particular facts are not to be given in evidence to impeach the character of a witness is, that if it were permitted, it would be impossible for that witness, having no notice of what will be sworn against him, to come prepared to give an answer to it; and thus the characters of witnesses might be vilified, without having any opportunity of being vindicated.

As to the witnesses themselves, some of them say, they know no ill of Lynch; many of them have known him but a little while; some of them give an account of declarations made since this prosecution began, and how fairly they were drawn from him don't appear; and for some others of them, I submit it to the view and consideration of the jury, from their habit, and the appearance they made, whether they ought not themselves to have brought witnesses to support their own credit.

One appears plainly to be mistaken, and that is Darcy; he was asked how long he had known Lynch? And, I think, he said he knew him in London last winter; now it appears that Lynch came into England but in April last.

Gentlemen, in the next place they called witnesses to Plunkett's credit, and there the same thing befell them as in the case of Lynch; for major Barnewell, their first witness on that head, though he is willing enough to give him an ill character, yet he confirms several of the facts which the other swore, and gives exactly the same account of the rescuing the goods, and the circumstances of Plunkett's becoming acquainted with Layer, which he gave.

Mrs. Child likewise supports Plunkett as to the circumstance of his carrying her husband to the prisoner's house, and the prisoner's refusing to see him.

As to Mrs. Mason, they have taken a great deal of pains to prove her a very ill woman. What she is, or what those persons are, whom they have called to her credit, we can't tell; but so much appears even from their own witnesses, that she is one with whom Mr. Layer thought fit to converse, and therefore it is not improbable that she might be entrusted by him: and it is from such only as he thought fit to converse with and entrust, that we can have any discovery. The prisoner, has, indeed, brought two or three women, who talk very fast, and seem very angry with her; and one of them tells the jury in a scolding way, that "she don't care what she says or does;" another, that "she would take away any man's life for the value of a farthing;" and such kind of vehement expressions. It is sufficient to say this, that people who talk thus loosely and passionately upon their oaths, rather bring a suspicion upon their own credit, than upon the credit of those against whom they swear.

But, gentlemen, if they had brought a much stronger evidence against the characters of the king's witnesses than they have done, what would it have availed them? Does this cause depend upon the characters of these three witnesses? It cannot be pretended that it does. Let their characters be what they will, their credit in this cause is undeniably supported; supported as to several material facts, by the evidence for the prisoner, but most strongly by the papers; against which, I apprehend, nothing has been said to take off their force. If those papers are not genuine, how should the notes signed with the Pretender's hand, which the prisoner received from sir William Ellis, come to be amongst them? How should this Scheme, proved to be of Mr. Layer's own hand-writing, have been there? The prisoner, I must own, did call one witness, Bennet, who was his clerk, and is now his solicitor, to swear he believed the scheme not to be the prisoner's hand. But it happened with Bennet, as it did with several others of their witnesses, that though he is willing to carry his belief as far as he can, that this is not his master's hand; yet he is forced to acknowledge another matter, which still verifies the papers contained in these packets to be his master's papers: for being asked of whose hand-writing one of them was, he swears it was written by himself for the prisoner, and by his direction. This comes out of the mouth of his own witness, and confirms Mrs. Mason's testimony, that these papers came from Mr. Layer.

But over and above all this, you have the prisoner's own confession, proved by two gentlemen whose credit is beyond all dispute; and certainly the prisoner must be allowed to be a good witness against himself.

However, we shall not leave the credit of our witnesses singly upon these observations, though I think we might safely do it; but shall endeavour to take off any ill impressions their evidence may have left upon you, and vindicate their characters; and that, not by such witnesses as some of those produced for the prisoner were, who, I observed before, might stand in need of witnesses to support their own credit, but by persons of undoubted reputation, who will satisfy you that their general character is such, that they very well deserve to be believed by you.

I have now done with repeating and observing upon the evidence on both sides; and I beg leave to insist upon it, that we have fully made good what was opened to you at the beginning of this cause, that in general there has been a horrid conspiracy carried on, in order to overthrow our happy constitution, and to deprive us of all the blessings we enjoy

and promise ourselves, under the establishment of his majesty and his Protestant royal family. The part the prisoner hath acted in this fully appears to you, and it appears to be a very considerable one.

It has been said, indeed, that he is but an inconsiderable man, of no rank or fortune fit to sustain such an undertaking. That observation may be true; but since it is plain he did undertake it, that, joined with the other circumstances proved in this cause, serves only to demonstrate, that he was set on work, and supported by persons of greater abilities for such an enterprize. And, gentlemen, this is the most affecting consideration of all.——But I would not, even in this cause of your king and of your country, say any thing to excite your passions; I choose rather to appeal to your judgments; and to those I submit the strength and consequence of the evidence you have heard.

My lord, I beg pardon for having taken up so much of your time; I have but one thing to add, and that is, humbly to beg of your lordship, for the sake of the king, for the sake of myself, and for the sake of the prisoner at the bar, that if I, through mistake or inadvertency, have omitted or misrepeated any thing, or laid a greater weight upon any part of the evidence, than it will properly bear, your lordship will be pleased to take notice of it, and set it right, that this whole case may come before the jury in its true and just light.

Serj. *Cheshire.* It is so late, that it will be inexcusable in me to trouble your lordship with any thing by way of reply, especially since Mr. Solicitor General hath done it so fully. We shall only beg leave to call a few witnesses to the credit of the king's witnesses.

Mr. *Ketelbey.* I shall not take up much of your lordship's time, especially since your lordship and the Court have been entertained so well and so long by Mr. Solicitor General, at least two hours, as I have observed by my watch; but it was impossible for me to think him tedious, though so late at night, and especially since his conclusion is exactly agreeable to the conclusion of a late celebrated Solicitor General * on a like occasion.

Att. Gen. We must beg leave to call some witnesses we have, who will support the credit of Mr. Lynch and Matthew Plunkett.

Mr. *Vernon* sworn.

Serj. *Cheshire.* Do you know Mr. Lynch?

Vernon. Yes.

Serj. *Cheshire.* What account do you give of him?

Vernon. I keep a tavern at the Swan and Rummer in Finch-lane; this gentleman hath frequented my house these four months every day, till he was in custody; he hath been a very good customer, and paid me honestly.

Serj. *Cheshire.* Do you know the prisoner at the bar? Have you seen Mr. Lynch and him in company together at your house?

Vernon. Yes; I have seen them twice in company together at my house.

Mr. *Ketelbey.* How long hath he been your customer?

Vernon. From the beginning about four months.

Mr. *Ketelbey.* About four months! Did he spend his money plentifully and freely?

Vernon. Yes; some part of it I have had since he hath been in custody.

Mr. *Ketelbey.* How much was he in your debt before he was in custody?

Vernon. Ten or eleven shillings.

Mr. *Ketelbey.* How long had he been in custody before he paid you?

Vernon. Not long.

Mr. *Hungerford.* He had the first fruits of his being in custody; he had some money, and so he paid you your reckoning.

Serj. *Pengelly.* We take it, that Mr. Vernon proves, that Layer and Lynch were conversant together.

Captain *Malthus* sworn.

Serj. *Cheshire.* Do you know Stephen Lynch?—*Malthus.* Yes.

Serj. *Cheshire.* How long have you known him?

Malthus. About nine years. I knew him first, when he was a merchant at the Canaries. I traded with him several times; several times I was consigned to him, and I have seen him at home.

Serj. *Cheshire.* What account can you give of his behaviour?

Malthus. He always behaved himself very well, I think.

Att. Gen. Do you think he would swear falsely to take away a man's life?

Malthus. No, I don't think he would.

Mr. *Ketelbey.* How long is it since you have been acquainted with him?

Malthus. Nine or ten years.

Mr. *Ketelbey.* How long is it since your last acquaintance?

Malthus. About four months.

Mr. *Ketelbey.* What distance of time did there use to be between your seeing of him?

Malthus. Two or three years; every time I came home.

Mr. *Ketelbey.* Doth he owe you any money?

Malthus. No.

Mr. *Ketelbey.* Would you trust him with money?—*Malthus.* He never asked me.

Mr. *Ketelbey.* Your witness we may ask as to particulars; Did you know his aunt there at that time?—*Malthus.* No.

Mr. *Ketelbey.* Did you know any thing of his behaviour?

Malthus. I never knew an ill character of him in my life.

* Mr. Finch, at col. Sidney's trial. *Former Edition.* The trial of Sidney is reported in this Collection, vol. 9, p. 817. I do not find in that report any account that the Solicitor General did what is here ascribed to him. Concerning that report, see vol. 9, p. 865.

Captain *Arnold* sworn.

Serj. *Cheshire.* Do you know Stephen Lynch?—*Arnold.* Yes.

Serj. *Cheshire.* How long have you known him?—*Arnold.* It is fourteen years ago.

Serj. *Cheshire.* You have been acquainted with him since. What account do you give of his character? Do you think he would forswear himself?—*Arnold.* No.

Serj. *Cheshire.* Do you take him to be a man of credit?

Arnold. I never had any dealings with him.

Serj. *Cheshire.* Would you have trusted him with five hundred pounds?

Mr. *Ketelbey.* Would you trust him with five shillings?

Arnold. Five shillings is a small sum.

Col. *Manning* sworn.

Serj. *Cheshire.* Do you know Matthew Plunkett?—*Manning.* Yes.

Serj. *Cheshire.* How long have you known him?

Manning. Upwards of ten years.

Serj. *Cheshire.* What credit hath he? Do you take him to be an honest man?

Manning. He behaved himself well, and like an honest man.

Serj. *Cheshire.* Do you think he would forswear himself?

Manning. No; I believe not.

Prisoner. Have you and I had any discourse about this very Plunkett? And did not you tell me he was a scoundrel?

Manning. No; I did not.

Mr. *Hungerford.* Did not you give him a bad character to Mr. Layer?

Manning. No, I did not.

Prisoner. Do you mean thus, that he behaved himself very well as a soldier? What is that as to his character in general?

Manning. I know no ill character of him while he was with me.

Mr. *Ketelbey.* Did you never hear any thing in relation to sir Daniel Carroll, that he made a wrong demand upon him?

L. C. J. If he made an unjust demand, will he therefore be perjured?

Mr. *Ketelbey.* What have you heard about that affair between Mr. Plunkett and sir Daniel Carroll?

Manning. I have heard Mr. Layer say——

Mr. *Ketelbey.* Did you never hear any body else speak of him? I ask you about making this demand upon sir Daniel Carroll, what you know of it?

L. C. J. I never heard any thing like it.

Mr. *Ketelbey.* My lord, we apprehend we may cross-examine, as to particulars, a person whom the other side produces as a witness to character.

Prisoner. Did not you afterwards, in discourse with Mr. White, mention it again with relation to this of sir Daniel Carroll?

Manning. I deny it.

Prisoner. Did you desire me not to examine you?

Manning. No, I told you I had nothing to say in relation to Plunkett's character.

Mr. *Hungerford.* Let him alone, I would not ask him any more questions.

Manning. Why let him alone?

Mr. *Hungerford.* I would not have him examine you any further.

Manning. You are very civil.

Mr. *Hungerford.* So I am, to give you no further trouble.

Major *Hamel* sworn.

Serj. *Cheshire.* Do you know Matthew Plunkett?

Hamel. I have known him these seventeen years.

Serj. *Cheshire.* What character hath he?

Hamel. He was then a drummer in the regiment, and always did his duty well; I never heard him complained of; he always had a good character; he went from Ireland to Spain.

Mr. *Hungerford.* You speak to his military conduct?

Hamel. I know of no other.

Serj. *Cheshire.* You say he always had a good character?

Hamel. Yes, he always had.

Captain *Crosby* sworn.

Serj. *Cheshire.* Do you know serjeant Plunkett?—*Crosby.* Yes.

Serj. *Cheshire.* How long have you known him.—*Crosby.* Three years.

Serj. *Cheshire.* What character had he for that time?

Crosby. Whilst I knew him, he bore a good character.

Serj. *Cheshire.* Did you hear any ill of him?

Crosby. Not during the time that I knew him.

Mr. *Ketelbey.* Where was the regiment at that time?

Crosby. It was in town about half a year ago.

Mr. *Ketelbey.* Were you not of the same regiment?—*Crosby.* We were.

Serj. *Cheshire.* We won't give your lordship any further trouble.

Mr. *Ketelbey.* And we apprehend we have no occasion to give your lordship any further trouble by way of reply.

Att. Gen. My lord, as to my lord North and Grey, we can prove he attempted to get away, and was endeavouring to go to France, and was taken in the isle of Wight; and that when the prisoner was seized, he sent a messenger to give my lord North notice of it. This last was confessed on his examination, and we can prove it.

Mr. *Ketelbey.* I must submit it to your lordship, whether his examination can be admitted as testimony, so as to affect a third person.

L. C. J. It is not worth disputing.

Gentlemen of the jury, This is an indictment against Mr. Layer, the prisoner at the bar, for high-treason. The treason with which he stands charged, is the compassing and imagining the death of the king; the overt-acts that

are laid in this indictment, as evidence of this treason, are several; first of all that he did meet and consult, advise and agree, to levy war against the king; the second is that he did publish a seditious and traitorous writing, exciting and encouraging the people to an insurrection, and offering rewards for that purpose; the third is, that he did engage in a design to set the Pretender on the throne; the fourth, that he listed soldiers against the king; and the last, that he did consult and agree, to take, seize, imprison the king: these are the several overt acts that are laid in the indictment of the treason, that is, the compassing and imagining the death of the king. Gentlemen, I must tell you, before I go on to lay before you, and observe on the evidence, what the law is; and I must tell you, that the law is undoubtedly so, if a man is charged with treason, in compassing and imagining the death of the king, there must be an overt-act of that treason proved in the county where he is indicted; and in the next place, if there be such overt-act in that county, he may be charged with any overt-act of the same species of treason in any other county whatsoever. This hath been frequently resolved and agreed, and was hardly ever made a question. I observed in the hands of one of the counsel, and he took notice of it, that he had the trial of sir William Perkins; he could not but observe there laid down by my lord chief justice Holt, if evidence be given of treason in one county where the indictment is laid, he may be charged with any overt-acts of the same species of treason in any other county whatsoever. The law being so, I will, in the best manner I can, set out the matters that have been given in evidence, on this long evidence, in the clearest light that I can state the examination, the objections that have been made, and the observations that are proper to be made upon it.

To maintain this indictment, the king's counsel have produced several witnesses. The first witness is Mr. Lynch; the second witness is Mr. Plunkett; all the other evidence hath been offered to confirm the evidence given by these two witnesses. As to Mr. Lynch, he tells you how he came to the acquaintance of Mr. Layer; that he was an intimate acquaintance of Dr. Murphey, and Dr. Murphey recommended him to Mr. Layer; being so recommended he had several meetings with Mr. Layer in Middlesex at the Griffin-tavern, and in Holborn at the Castle-tavern, and I think at Southampton-buildings.

He tells you, at these several meetings it was declared, that there was to be a rising, and it was thought necessary, to make this rising the more effectual, that my lord Cadogan, the commander in chief of the king's forces, should be seized.

Mr. Layer said to Mr. Lynch, he was looked upon as a person proper for the undertaking, and he declared that he was willing; and said, if that was the opinion of those concerned in the affair, he would undertake to do it: after this they went to my lord Cadogan's house, to view the house, and the several avenues about the house; and after they had taken this view, Lynch declares his opinion, that it was feasible, and he would undertake to do it.

After he had given you an account of what happened at the several meetings in Middlesex, then he comes to what was done in the county of Essex: he tells you Mr. Layer came to him, and asked him whether he would ride out with him to take the air? He agreed to it; they both went out of town together; he said, that as they were going along, Mr. Layer told him his intention was to go to my lord North and Grey's; he says, they went forward with that intention, but before they came to the Green-Man at Layton-stone, they thought it would be too late before they got to my lord North and Grey's for dinner, therefore they thought proper to halt at the Green-Man, and take a refreshment there. He tells you, they did stop there at the Green-Man, and at that time Mr. Layer did repeat the discourse of the rising that was intended to be; he said, my lord Townshend, and my lord Carteret and Mr. Walpole were to be seized, a party were to be sent to seize the king; and that a scheme was laid for seizing my lord Cadogan, and that it was proposed as a proper time to put this in execution at the breaking up of the camp. He said, when he was mentioned, at first he made some little doubt whether that was a proper opportunity; with that Mr. Layer told him, pray consider with yourself, if you do not think this practicable, will you propose something else, and we will alter our scheme?

He saith, at this same time Mr. Layer pulled out of his pocket a Declaration, purporting an exhortation and excitation for people to rise and take up arms against the king, and rewards offered for that purpose.

Afterwards they went to my lord North and Grey's, and that Mr. Layer introduced him to his lordship, as his friend; that they were civilly and kindly received, supped there, lay there that night, and dined there the day after. This is the evidence given with relation to what was done in the county of Essex; and if this relation be true, no doubt there is a good overt act proved upon him in the county of Essex, and consequently the indictment is well laid in Essex, and then the evidence in the county of Middlesex will be a proper evidence against the prisoner.* But as to this evidence of Mr. Lynch, they say for the prisoner, Mr. Lynch is not to be believed, that he is a vile, profligate wretch, and no credit is to be given to him, though upon his oath; and it must be

* See East's Pl. Cr. ch. 2. s. 61, as cited p. 164. That if one sufficient overt act in the county in which the indictment is laid be proved by one witness and another in another county be proved by another witness, this is proof by two witnesses to satisfy the requisitions of the stat. 7 W. 3, c. 3. See East's Pleas of the Crown, ch. 2, s. 65.

admitted the evidence that hath been given for that purpose, by a great number of witnesses, will be proper for your consideration: but you will consider, in a case of this nature, if you are to expect witnesses without exception, it is impossible to have any evidence to convict a man of high treason; nobody will engage in such an affair that is of a nice credit and reputation, and therefore it is not to be expected; for if it be, it is and will be impossible to convict any person of treason.

But then you will consider, although credit is not entirely to be given to a man of ill repute, yet if he is supported in his evidence that he gives by other evidences, you will consider whether that will not remove all sorts of objections as to his character.

As to the overt act of publishing the declaration, that is supported beyond contradiction; for it appears in his examination before the lords of the council, when he is asked, whether he ever saw the declaration? He says, he never saw any but one, and that was drawn by himself.

Prisoner. My lord, what Mr. Stanyan says, I believe, he did not say that I confessed that it was drawn by me.

L. C. J. You must not interrupt me while I am directing the jury. You have behaved yourself intemperately hitherto, but you must not interrupt me, I cannot bear it. The substance of what Mr. Stanyan said is, that when it was demanded of you, whether you had seen the declaration, you said, you had seen none but a rough draught that was drawn by yourself.

Prisoner. I beg your lordship's pardon, Mr. Stanyan is here in court.

L. C. J. Is he in court? Let him be asked the question again.

Stanyan. My lord, I believe I did say, that Mr. Layer did confess, that it was the heads of a declaration which he had drawn himself.

L. C. J. Now, Sir, after this, I expect not to be interrupted by you any more.

This being the matter, he doth at the same time confess, that that was the declaration which he had shewn to Mr. Lynch at the Green-Man, on the way as they were going to my lord North and Grey's. So that part of this evidence is supported by Mr. Layer's own confession. As to the other part, that he did consult and agree to levy war, consider, that he confesses before the council, that he did go to the Green-Man, and there shewed the declaration to Mr Lynch; whether that doth not give credit to what the other saith, that he went to the Green-Man, and that there they talked of the insurrection, and the levying of war; and then went to my lord North and Grey's, with this, that he recommended Mr. Lynch to my lord North and Grey as a fit person to seize my lord Cadogan, and to be concerned in the insurrection.

Gentlemen, this is not the only matter by which he is supported in this evidence, that the prisoner designed an insurrection, and to levy war against the king; but he confessed before the council, that he went to Rome, had two several conferences with the Pretender, and was very kindly received by him: he said he asked the Pretender, if he would give him any credentials that might recommend him to his friends in England; that was objected to, and not complied with; but then he asked a particular favour, that the Pretender's spouse would stand godmother to his child; that is granted; and the Pretender himself is willing to stand godfather.

Afterwards, when he returns into England, he considered of proper proxies to represent the Pretender and his spouse; and asking my lord Orrery, he refused him; then he asked my lord North and Grey, who consented: my lord North and Grey stood as proxy for the Pretender, and the duchess of Ormond as proxy for the Pretender's wife.

He tells you, at this time when he was at Rome, he had told sir William Ellis, it would be of great service if he could have a fund of credit to raise money with. How must that be? Why, saith he, let me have blank receipts signed by the Pretender himself; and accordingly he had.

This, he tells you, is what happened at that time. Now the evidence given by Mr. Lynch, being of an insurrection in favour, and for the service of the Pretender, when Mr. Layer owns he had two conferences with the Pretender, and was received so kindly by him, and had such particular marks of his favour; consider whether this doth not support the evidence which is given by Mr. Lynch.

The next evidence is Mr. Plunkett; he tells you how he came recommended to Mr. Layer by one major Barnewell, on this occasion. He tells you Mr. Layer's goods were in execution, and he was employed by major Barnewell to rescue them; accordingly he went and fetched a couple of soldiers, got into the house, drove out the officers, and rescued the goods. By this it appears, that Mr. Plunkett was a bold daring man, fit to be employed on such an occasion, and they assign that as a reason which answers the objection made. Saith Mr. Layer, how came it to pass, that when I had never seen this man, that I of a sudden should have such a confidence as to trust him in an affair of this nature? In answer to that, it is said, he had done him a singular service before, he had done a bold act, had got some grenadiers and rescued his goods when they were taken in execution; and likewise James Plunkett had given a character of him, that he looked upon him as an honest man, and therefore recommended him to Mr. Layer.

Then he tells you, that Mr. Layer said they wanted a man to serve on this occasion; that James Plunkett talked of officers, but we don't want officers so much as we do brave serjeants, old soldiers, such as will be ready and qualified to support the mob, and to discipline and head them; these are the men we want, can you get such as these? Such as you are, that will be

are laid in this indictment, as evidence of this treason, are several; first of all that he did meet and consult, advise and agree, to levy war against the king; the second is that he did publish a seditious and traitorous writing, exciting and encouraging the people to an insurrection, and offering rewards for that purpose; the third is, that he did engage in a design to set the Pretender on the throne; the fourth, that he listed soldiers against the king; and the last, that he did consult and agree, to take, seize, imprison the king: these are the several overt acts that are laid in the indictment of the treason, that is, the compassing and imagining the death of the king. Gentlemen, I must tell you, before I go on to lay before you, and observe on the evidence, what the law is; and I must tell you, that the law is undoubtedly so, if a man is charged with treason, in compassing and imagining the death of the king, there must be an overt-act of that treason proved in the county where he is indicted; and in the next place, if there be such overt-act in that county, he may be charged with any overt-act of the same species of treason in any other county whatsoever. This hath been frequently resolved and agreed, and was hardly ever made a question. I observed in the hands of one of the counsel, and he took notice of it, that he had the trial of sir William Perkins; he could not but observe there laid down by my lord chief justice Holt, if evidence be given of treason in one county where the indictment is laid, he may be charged with any overt-acts of the same species of treason in any other county whatsoever. The law being so, I will, in the best manner I can, set out the matters that have been given in evidence, on this long evidence, in the clearest light that I can state the examination, the objections that have been made, and the observations that are proper to be made upon it.

To maintain this indictment, the king's counsel have produced several witnesses. The first witness is Mr. Lynch; the second witness is Mr. Plunkett; all the other evidence hath been offered to confirm the evidence given by these two witnesses. As to Mr. Lynch, he tells you how he came to the acquaintance of Mr. Layer; that he was an intimate acquaintance of Dr. Murphey, and Dr. Murphey recommended him to Mr. Layer; being so recommended he had several meetings with Mr. Layer in Middlesex at the Griffin-tavern, and in Holborn at the Castle-tavern, and I think at Southampton-buildings.

He tells you, at these several meetings it was declared, that there was to be a rising, and it was thought necessary, to make this rising the more effectual, that my lord Cadogan, the commander in chief of the king's forces, should be seized.

Mr. Layer said to Mr. Lynch, he was looked upon as a person proper for the undertaking, and he declared that he was willing; and said, if that was the opinion of those concerned in the affair, he would undertake to do it: after this they went to my lord Cadogan's house, to view the house, and the several avenues about the house; and after they had taken this view, Lynch declares his opinion, that it was feasible, and he would undertake to do it.

After he had given you an account of what happened at the several meetings in Middlesex, then he comes to what was done in the county of Essex: he tells you Mr. Layer came to him, and asked him whether he would ride out with him to take the air? He agreed to it; they both went out of town together; he said, that as they were going along, Mr. Layer told him his intention was to go to my lord North and Grey's; he says, they went forward with that intention, but before they came to the Green-Man at Layton-stone, they thought it would be too late before they got to my lord North and Grey's for dinner, therefore they thought proper to halt at the Green-Man, and take a refreshment there. He tells you, they did stop there at the Green-Man, and at that time Mr. Layer did repeat the discourse of the rising that was intended to be; he said, my lord Townshend, and my lord Carteret and Mr. Walpole were to be seized, a party were to be sent to seize the king; and that a scheme was laid for seizing my lord Cadogan, and that it was proposed as a proper time to put this in execution at the breaking up of the camp. He said, when he was mentioned, at first he made some little doubt whether that was a proper opportunity; with that Mr. Layer told him, pray consider with yourself, if you do not think this practicable, will you propose something else, and we will alter our scheme?

He saith, at this same time Mr. Layer pulled out of his pocket a Declaration, purporting an exhortation and excitation for people to rise and take up arms against the king, and rewards offered for that purpose.

Afterwards they went to my lord North and Grey's, and that Mr. Layer introduced him to his lordship, as his friend; that they were civilly and kindly received, supped there, lay there that night, and dined there the day after. This is the evidence given with relation to what was done in the county of Essex; and if this relation be true, no doubt there is a good overt act proved upon him in the county of Essex, and consequently the indictment is well laid in Essex, and then the evidence in the county of Middlesex will be a proper evidence against the prisoner.* But as to this evidence of Mr. Lynch, they say for the prisoner, Mr. Lynch is not to be believed, that he is a vile, profligate wretch, and no credit is to be given to him, though upon his oath; and it must be

* See East's Pl. Cr. ch. 2. s. 61, as cited p. 164. That if one sufficient overt act in the county in which the indictment is laid be proved by one witness and another in another county be proved by another witness, this is proof by two witnesses to satisfy the requisitions of the stat. 7 W. 3, c. 3. See East's Pleas of the Crown, ch. 2, s. 65.

admitted the evidence that hath been given for that purpose, by a great number of witnesses, will be proper for your consideration: but you will consider, in a case of this nature, if you are to expect witnesses without exception, it is impossible to have any evidence to convict a man of high treason; nobody will engage in such an affair that is of a nice credit and reputation, and therefore it is not to be expected; for if it be, it is and will be impossible to convict any person of treason.

But then you will consider, although credit is not entirely to be given to a man of ill repute, yet if he is supported in his evidence that he gives by other evidences, you will consider whether that will not remove all sorts of objections as to his character.

As to the overt act of publishing the declaration, that is supported beyond contradiction; for it appears in his examination before the lords of the council, when he is asked, whether he ever saw the declaration? He says, he never saw any but one, and that was drawn by himself.

Prisoner. My lord, what Mr. Stanyan says, I believe, he did not say that I confessed that it was drawn by me.

L. C. J. You must not interrupt me while I am directing the jury. You have behaved yourself intemperately hitherto, but you must not interrupt me, I cannot bear it. The substance of what Mr. Stanyan said is, that when it was demanded of you, whether you had seen the declaration, you said, you had seen none but a rough draught that was drawn by yourself.

Prisoner. I beg your lordship's pardon, Mr. Stanyan is here in court.

L. C. J. Is he in court? Let him be asked the question again.

Stanyan. My lord, I believe I did say, that Mr. Layer did confess, that it was the heads of a declaration which he had drawn himself.

L. C. J. Now, Sir, after this, I expect not to be interrupted by you any more.

This being the matter, he doth at the same time confess, that that was the declaration which he had shewn to Mr. Lynch at the Green-Man, on the way as they were going to my lord North and Grey's. So that part of this evidence is supported by Mr. Layer's own confession. As to the other part, that he did consult and agree to levy war, consider, that he confesses before the council, that he did go to the Green-Man, and there shewed the declaration to Mr Lynch; whether that doth not give credit to what the other saith, that he went to the Green-Man, and that there they talked of the insurrection, and the levying of war; and then went to my lord North and Grey's, with this, that he recommended Mr. Lynch to my lord North and Grey as a fit person to seize my lord Cadogan, and to be concerned in the insurrection.

Gentlemen, this is not the only matter by which he is supported in this evidence, that the prisoner designed an insurrection, and to levy war against the king; but he confessed before the council, that he went to Rome, had two several conferences with the Pretender, and was very kindly received by him: he said he asked the Pretender, if he would give him any credentials that might recommend him to his friends in England; that was objected to, and not complied with; but then he asked a particular favour, that the Pretender's spouse would stand godmother to his child; that is granted; and the Pretender himself is willing to stand godfather.

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able to discipline the mob and put them in order. I told him (says the witness Plunkett) I would do my endeavours, and accordingly I advised him that I had procured twenty-five ready for the service; he desired to have lists of their names, and the places of their abode, that so he might know where to send to them on occasion.

Now the objection to this evidence being only, how comes it to pass that a man should be trusted with such a secret, and this on the first sight or acquaintance? Why, saith he, I had been employed before, and had shewn myself faithful on other occasions, and did serve him in rescuing his goods, when they were seized upon in execution, and James Plunkett recommended me. This is the evidence of Matthew Plunkett; and if Plunkett swears true, if he was desired by Mr. Layer to procure and list men for the service of the Pretender, and he says and declares he did do it, then, if this evidence is to be credited, the prisoner at the bar is guilty of the treason wherewith he stands charged: But still they rely upon it, and hope you will not give credit to the witnesses. You hear what hath been answered by the counsel for the king, and I observe to you now, that though here was such a charge against the witnesses, the king's counsel have produced several persons that had good aspects, and seemed to be men of reputation, who say, they know them, and believe them to be men of reputation.

Then, gentlemen, the next thing insisted on is, that the evidence given by Lynch and Plunkett is supported by the papers that were seized in Mrs. Mason's custody. Consider how that matter stands; Mrs. Mason tells you, that Mr. Layer brought two packets of papers sealed up to her, and told her they were love-letters; she says, she was desired to keep them by the prisoner; and accordingly she did keep them for him; and you have it afterwards from the witnesses, who have been produced, and against whose credit there is no exception, that having a warrant against Mrs. Cook and Mrs. Mason, they came to Mrs. Cook's house to search for papers, and in Mrs. Mason's room there was a trunk which was locked; they ordered it to be opened, which Mrs. Mason did, and they took out of the trunk two bundles of papers sealed up as you have heard; they tell you the bundles of papers were opened, that they set their marks upon each paper; and one of them did not immediately set his mark; but afterwards it is proved that he kept them from the time they were delivered to him till the other came back again, and then upon his return he delivered them back again to him; then he set his mark upon them, both set their marks upon them, and therefore they can swear that they are the same papers that were taken out of Mrs. Mason's trunk: Then, if Mrs. Mason swears true, they are the papers of Mr. Layer, which were delivered to her by him; and so tracing it from hand to hand, these are the same papers that were found in Mrs. Mason's custody. Mrs. Mason swears the same; and she also set her mark upon them.

But, saith Mr. Layer, there is no credit to be given to Mrs. Mason, she is an ill woman, an infamous woman, therefore her evidence is not to be regarded.

Gentlemen, consider how this matter stands; in one of these packets of papers were found the Pretender's receipts, which Mr. Layer before the council said, he had desired sir William Ellis to procure for him from the Pretender, and which he had accordingly procured, and that he had received them; and these receipts being in the packet found upon Mrs. Mason, how came they there, if they had not been delivered to her by Mr. Layer? Therefore these receipts being in this packet, plainly demonstrate that these papers are the papers of Mr. Layer, and were by him delivered to Mrs. Mason: And if they were his papers, these papers, and what is contained in them, will be a strong evidence against Mr. Layer. Notwithstanding all this, says Mr. Layer, these were never my papers; it is forgery or perjury. Whether or no you will believe these papers to be Mr. Layer's, when it appears those receipts were found amongst them; besides that, here is a paper amongst them, that the witness that is produced by Mr. Layer, one that was his clerk, swears that it is his own hand-writing; how came that there, if this be not the bundle and packet of Mr. Layer? And on this they turn the strength of their case.

If this be so, consider, first here is a Scheme; whose hand-writing it is, here hath been variety of evidence as to that. It is insisted on by the king's counsel that the Scheme is of Mr. Layer's hand-writing; and if so, this is a stronger evidence against Mr. Layer, than if the papers had been only found in his custody. How stands that? Here is one that was Mr. Layer's master formerly, who saith, he verily believes this to be the hand-writing of Mr. Layer; if that be so, then all is well, and it ought to be read, not only as a paper that was in his possession, but as a paper that was writ by him: But they dispute, and say, it is not his hand-writing; they ask this witness how long it is since the prisoner lived with him as his clerk; about fourteen or fifteen years ago, says the witness: A man's hand, say they, may be changed in that time: But saith the witness, I verily believe it to be his hand-writing, for I have within these five years received several letters from him about business, there being a correspondence between him and me, I being his agent in town, and these letters are of the same character he used fourteen or fifteen years ago, therefore I believe it to be his hand-writing.

But, say the counsel for the king, we won't only prove this by these gentlemen, but the prisoner himself hath confest it. Well, how stands that? He confest, when he was asked at the council-table, what he knew of arms that were provided? He said, he knew of none. To which when it was said, how came you to mention it in this Scheme of your own hand-writing; there you take notice of arms

that were provided? Doth Mr. Layer disown it? No, saith he, it is a mistake, I should have writ, 'which should be provided.'

Gentlemen, take this together, consider with yourselves, what the import of it is. He saith, when he is asked about these arms, I should have writ, 'which should be provided.' Whether this doth not amount to a confession of this matter, must be left to your consideration, as a confirming evidence of what the other witnesses swear. But, saith Mr. Layer, let me call a witness to prove that it is not my handwriting: He calls a gentleman, and he says it is not his hand writing; he calls his clerk, and his clerk saith it is not his master's hand. Here are two witnesses: Then there is an additional witness on the other side, and that is, his own confession. Whether it amounts to a confession must be left to your consideration; but if this Scheme be not of his own handwriting, it was a Scheme which he had in his custody, and that alone had been a considerable evidence against him. How came he by this Scheme? What had he to do with it?

The Scheme hath been read to you, which tells you the several methods to be proceeded in. In the first place, the Tower is to be seized, an officer is to mount the guard that would be in their interest, and at nine o'clock at night they are to seize the Tower: then they are to go to the Bank, and set a guard there, after they have taken out money from thence: after this he tells you of several other guards that are to be set in other places, and then a party is to be sent to seize the king; then he tells you, another party is to be sent over the water to seize his royal highness the prince; he calls him by a cant name, but it is plain he is meant.

If this be all his own hand-writing, it is a strong evidence that he was in this conspiracy; but if he had only a Scheme of this nature in his custody, that will be an evidence against him, though he did not write it.

Now, whether every body is not satisfied that these bundles were his, when in these bundles these receipts signed by the Pretender himself, and the paper that was of his clerk's own hand-writing, were found; it goes a great way to confirm the evidence of Mrs. Mason, who swears the bundles to be his papers.

These are matters of evidence, and must be left to your consideration.

Then they go on and examine the treasonable papers, the notes, the lists, &c.

To raise an insurrection money would be wanting; saith Mr. Layer, I told sir William Ellis this. Upon that there are receipts signed by the Pretender, by which the prisoner said they might take up money on that occasion. Sir William Ellis agrees with me, saith Mr. Layer, and accordingly sends me receipts, and I had them, and they were found in this bundle of papers; and how came they there, if they were not Mr. Layer's papers?

Consider the other papers; the design being for an insurrection, they are to engage the guards in their service; you see that several papers are found in these bundles that contain an account of the number of men that were in such a troop of guards, the number in such a troop of grenadiers, and tells you what the numbers were; what was the meaning of all this? How came this gentleman to be so solicitous in examining into the number of guards and officers, but only to get a true state of this matter, that he might know who were the persons that were most likely to be corrupted, and what a number of enemies he might meet with on this occasion?

These are very strong circumstances against Mr. Layer, unless Mr. Layer can give any account why he kept these papers so carefully.

To go a little back, as to the business of Mr. Lynch; it appears he did not know Mr. Lynch before this affair was set on foot; he rode out with him, goes to the Green Man with him, there they talked over this affair, there he publishes that traitorous declaration, and afterwards presented Lynch to my lord North and Grey. How came they so intimately acquainted unless on this occasion?

Then, gentlemen, they go on and tell you, when this gentleman was committed into the custody of a messenger he made his escape, and this we look upon as an evidence of guilt, not a conclusive evidence; a man may escape though he is innocent, yet it is an evidence that is material to be left to the jury, and is proper for their consideration; he is pursued and retaken; when he is retaken he is under great consternation; he begs for the Lord's sake they would let him go, and said it was an arrest; he took out of his pocket a great number of guineas, and said, they should have what number they pleased, if they would let him go; this is a material circumstance, and doth shew that this gentleman was more than ordinary concerned in this affair.

You will lay these things together, and consider how far they satisfy you, that this gentleman is guilty of the treason.

Then they give you an account how he did confess before the lords of the council every thing that hath been sworn by the witnesses: that he went to the Green Man in your county, and there consulted and agreed to carry on this affair; that he did take out and read the declaration; this is a strong evidence, especially if compared with what he confessed, that he had two conferences with the Pretender at Rome, was kindly received by him, and had particular marks of his favour: he is desired to stand god-father, and his wife to stand godmother to his child; and accordingly they stood; he desires my lord North and Grey to stand as proxy for the Pretender, and the duchess of Ormond to be proxy for the Pretender's spouse; and they were proxies at the christening of his child. These are the circumstances that have been laid before you on behalf of the king against the prisoner at the bar. But it is said on the behalf of the prisoner, that he stands at the bar upon his life and death, which will depend upon your verdict.

ment to be read, and the Court never denied it; to have any other part of the record to be read, seems to be as reasonable as the indictment. The objection had been stronger, if we had desired for the prisoner at the bar the copy of the Venire; there we should have been justly told, that we had been entitled to nothing but what the act of parliament had directed, viz. the copy of the indictment. We pray a copy of nothing, but only pray that a small part of the record that makes up the whole record of this gentleman's conviction, may be read. And this, with submission, we hope we are entitled to have for the same reason as the indictment was read before the act. Colonel Sidney desired that his indictment should be read, and it was so. And can any reason be assigned, why the Venire, which is but a part of the record, should not be read as well as the indictment? No one part of the record of conviction is more sacred than the other; and why therefore should not one part be read as well as the other?

Serj. *Pengelly.* Can you shew any case where the indictment was read upon the prayer of the prisoner, after conviction, and before some exception taken?

L. C. J. We would be far from refusing any indulgence to the prisoner that by law we are warranted to grant him; what you ask now, you must own is without any precedent whatsoever. You know, that before the act of parliament, you were not entitled to, nor could demand a copy of the indictment: It is very true what you say before the act of parliament; when it hath been desired by the prisoner the indictment hath been read, and that method of proceeding having been allowed, gave him a right to demand it; but you cannot produce any one instance that ever he demanded this that now you offer; that ever he demanded the Venire should be produced and read to him.

Consider how strict the law was in cases of high-treason; see the Act of Rights: The course of the Court is the law; this which you now desire was never so much as asked for, nor did this Court ever grant it; and if so, how can the Court be warranted to grant that which was never granted, nor was ever desired to be granted? The reason of it is, that every body was satisfied by law it could not be granted.

You have instanced in cases of great persons, colonel Sidney, lord Russel, and others that have been attainted of high-treason, who could not want advice to desire any thing that was proper, or that they had a right to demand. Neither they nor any of the greatest quality that have had the misfortune of being tried for an offence of this nature, ever demanded it; which is an admission that they were not entitled to it; and if the course of the Court be so, we must not establish a new course; we can't see what the consequences may be.

Just. *Eyre.* The case of reading the indictment to a prisoner is certainly very different, and can be no authority to warrant the reading of the Venire; for the indictment is the charge to which the prisoner is obliged to plead, and he must know his charge before he can give it an answer: Besides, the merit and justice of the case depend entirely upon the indictment, which must be read, in order to understand the true state of the question, and to see the fact to which the witnesses are to be examined. It is therefore absolutely necessary, that the indictment should be read; but none of these reasons will serve for reading the Venire, which is only to summon the jury, and bring them to the bar: and therefore as it was never done, nor ever asked before, I can by no means think it fit for us to allow it now.

Just. *Powys.* I think it is a perfect novelty what you demand, and not only so, but in its consequences very dangerous: For, properly speaking, the common usage to move in arrest of judgment hath been out of the indictment; but to run back to these things, which if you had a right to demand, it had been proper to have done it before; and since you have many times known that nothing but the indictment hath been read, since the judges were never moved, nor any thing of this kind done, and nothing in the world hath been demanded like it: if it should be granted at this time, when men are to receive judgment, and exceptions are to be taken to the indictment, if they should run back to all the proceedings, it would be a thing of strange consequence. But besides that, it is a thing you have no example for, it hath been never done; and it hath been observed, that nothing but the copy of the indictment hath been read before this act of parliament of king William. Now there are two things given by this act of parliament of king William; the prisoner is to have the copy of his indictment five days; the copy of the pannel of the jury two days before his trial; and these were proposed as advantages which the common law did not admit: Shall we come to unravel all the matters precedling? It would be a matter of strange consequence, and what we can't do or warrant by law: If you have any thing to move out of the indictment, we are ready to hear it.

Just. *Fortescue Aland.* This is perfectly new, or else in favour of life I should be ready to grant it: The true reason of having the indictment read is, that the prisoner may know what his charge is, in order to make his Defence at his trial; but that reason holds not in this case, which is after conviction; and what is asked now is not relative to his charge, but concerns the acts of the Court only. The Court will assist in matters of law, when they appear, but will never assist the prisoner with facts, in order to make points of law; and therefore it has been denied the prisoner to take minutes even of the indictment; and for the same reason counsel has ever been denied, in all capital cases, before the late act of parliament, unless a disputable point of law did arise and appear.

You move this matter as a motion purely at

common law; and as such it will extend to all indictments of murder, and other capital cases, which may be of very evil consequence. It would be very strange to have all the proceedings upon indictments read to the prisoner; and there is as much reason to call for all as for the Venire Facias: I take it clearly there never was a case, where the acts and proceedings of the Court have been called for to be read to the prisoner, and for no other purpose but to make an error: It is a thing that is entirely new, the consequences may be very fatal, and therefore I think it an unreasonable motion, and ought not to be granted.

Mr. *Hungerford.* I assure your lordship I did not do it out of an affectation of novelty, neither shall I persist in urging it further, since the Court hath given their opinion; but I thought the reason of the thing, in reading the indictment before the act of parliament, was with me; but since it is your lordship's opinion that it is otherwise, I desire your lordship to give me leave to go on.

Prisoner. I beg leave to say but a short word in respect to this objection that hath been made by Mr. Hungerford. If I take the thing right, it is, that the Venire may be read, to see if it is properly issued, and I hope thus far it shall be granted, to shew a reason why this Venire is returned on one day, and the jury appear on another; and it doth appear that there is an error in the proceedings on the foot of the Venire, I humbly hope I shall have the benefit of it. The objection, I take it, must be this; the Venire, I take it, is returnable the 19th of the month of November, I was not tried till the 21st; therefore, what I humbly offer is, whether or no, after the return of the writ, this is a good convening of the jury together to try me on a writ when there was no such writ in being, more especially when the proceedings against me are by original, where the returns in the Court are the same as in the Common Pleas; so I shall leave it to my counsel to say the rest, and humbly hope, that I shall have leave to look into the Venire, and if it come out so, I hope it is erroneous, and that judgment shall be arrested.

Mr. *Hungerford.* The gentleman hath given utterance to some of my thoughts; and not by comparing of notes, for I have not seen his face, nor heard from him since I saw him here at the bar at his trial.

That which occurs to me on this occasion, but I can but guess at some part of the fact, is, I take it, that the Venire bears teste the last day of October, and is returned the 19th of November; they are stated return days of the law; and, my lord, if a man appears in a court of justice one day, and he is not by the course of proceeding indulged with a further day of appearing, there is a discontinuance of the process, and the man is out of court. The different days the law takes notice of for this purpose are, the essoign day, the day of exceptions, the day of appearance, the 'quarto die post;' I take the 'quarto die post' to be an indulgence which a court of justice gives to a suitor to appear at a further day, when he ought to have appeared at a former day; and this is the practice in real actions in the Court of Common Pleas. As to the exception day, the use of that is, that a man that is summoned may object to the summons, as not being a fit and regular summons to draw him in contempt.

But, my lord, in cases of juries, who are not suitors in court, I take the law and the practice to be, that they are obliged to attend upon the process of the Court; I take it, they must do duty on the return of the Venire, which in this case, is on Monday the 19th of November, and did not appear till Wednesday the 21st; so, that if they were to appear on Monday the 19th of November, and did not appear then, there must appear some act of the Court, by which they are indulged to a further day: and I put it upon Mr. Harcourt to shew, whether there is any indulgence of the Court entered upon record for the continuing of the jury till Wednesday following, and if there is not, there is then a discontinuance of their being in this court, and consequently the proceedings are irregular, and the trial a mis-trial: I shall quote some authorities which justify this observation; when a man by a process of court appears on the day of the return of that process, unless there be a continuance of that process, that 'ulterior dies datus est' to the party, or a subsequent process issues that day, the law deems that chasm in the proceedings to be a discontinuance, and that the party is out of court. It was so resolved in Yelverton, 204; and 2d Coke, 284. It is the case of Bradley and Banks; and reported in both books, but most fully in Yelverton. There is an authority which weighs with me something more, and seems to be a case in point; it is the case of Peplow and Rowley, 2d of Croke, 357, and there the case is on a Writ of Error brought upon proceedings in the court of Shrewsbury, where the usage was, to hold plea in some real actions, and there was an entry that the parties did not appear on a preceding day, but made default: And the entry was 'habuit 'diem per default'' given to the party by the Court, 'secundum consuetudinem villæ præ-'dictæ.' This came before this court by a Writ of Error, and it was adjudged, that both the entry and the custom were naught. The reason assigned why the entry was so, is, for that the party having made default was out of court, and the Court could upon that process give him no new day to appear. And the reason why the custom itself is naught, is, for that there can be no custom to help that (which the book calls) a discontinuance at common law; for if the man be out of court, he can't be brought in there again by the same writ.

My lord, if that be the case then, that the jury were to appear on the 19th, and there is no entry to continue them till Wednesday the 21st, then by the authority of these cases they had no call nor right to appear, but were out of

court, the trial was no legal trial, and consequently no trial at all.

I am told, that the practice of all trials at bar is, that the jury do appear here on the return of the Venire, and immediately proceed to do business; why should it not be so too in a criminal case, as this is? I think the reason in both cases is the same: I humbly hope therefore, my lord, that if the fact be as I have represented, that there is no entry to continue over the attendance of the jury from Monday to Wednesday, there is a blemish in this proceeding; and you can't proceed to judgment against the prisoner at the bar.

Mr. *Ketelbey.* If your lordship will favour me——

L. C. J. You shall be fully heard; but because Mr. Hungerford hath appealed to Mr. Harcourt, I shall ask Mr. Harcourt this question about the matter of the Venire.

Mr. *Harcourt.* I shall be very tender in this matter, where the life of the prisoner is at stake, as Mr. Hungerford has observed, and will not say any thing but what I am sure is the course of the Court. If a Venire be returnable the first general return of the term, the appearance-day of the jury is the 'quarto die post,' which is the first day of the term. If the Court be not pleased to try the prisoner then, they may adjourn the jury over to any day before the next return in the term; but no entry is ever made on record of such adjournment, and the proceedings are always entered on record to be at the return of the writ. In all other returns in the term, there is the same course observed: The jury is never obliged to appear before the 'quarto die post;' nor can the prisoner be tried sooner. What makes this clear is, to consider the proceedings on Distringas, where the prisoner is not tried on the Venire: In such cases the Distringas is never tested on the return-day, but the 'quarto 'die post;' which, if what is insisted on by the prisoner's counsel is law, would make a discontinuance, and that has always been held otherwise; for till there has been a default of the jury's appearing on the Venire, no Distringas can issue, and no default can be objected to the jury for not appearing till the 'quarto die post;' nor are they amerciable sooner for not appearing. This matter was settled on great delibesation by my lord chief justice Holt; and, I am confident, has been ever since so practised.

Mr. *Ketelbey.* My lord, it was my misfortune not to get into court sooner; so that I did not hear the first application Mr. Hungerford made to your lordship on behalf of the prisoner, nor shall I presume to break in upon what your lordship has already determined; but whether or not we are entitled to see the Venire, or hear that part of the record read, I hope we shall be able to make out, that there has been a mis-trial in this case. The Venire, it is agreed on all hands, was returnable octabis Martini, which was Monday the 19th of November. That the prisoner was not tried till the 21st, is most certain. The general return was octabis Martini, and he was not tried till two days after; and notwithstanding what Mr. Harcourt hath said, I must beg leave humbly to insist, that there hath been a mis-trial, and judgment ought to be arrested; and for that I have as strong an authority as any that can be cited in this court, 'tis the trial of Rookwood; and for the greater certainty, I have brought the book along with me, and have it in my hand; where it is agreed by the Court, and all the king's counsel, that the trial must be on the day of the return of the Venire, or else that it would be error: and my lord chief justice Holt declared, the issue could not be tried after the day of the return: this matter came before the Court upon an exception taken by sir Bartholomew Shower.

Just. *Eyre.* That was on a commission of Oyer and Terminer, which was quite different; there is no 'quarto die post' there, no day of appearance, but the day of the return of the writ.

L. C. J. It must be so, because there is no such thing as a 'quarto die post' in commission of Oyer and Terminer.

Mr. *Ketelbey.* I submit it to your lordship, whether there is any 'quarto die post' in a Venire?

L. C. J. It is always so.

Just. *Eyre.* You know we had the consideration of this when we appointed the trial.

Mr. *Ketelbey.* I beg leave to offer one word, that, in case of a Venire, there is no 'quarto die post,' because there is no essoign, no exception-day for the jury. The authority in first Roll's Abridgment, 822, Placit. 4 and 6, is express, that in a Venire Facias, or a Scire Facias,' there is no essoign: and where there is no essoign, there can be no day of exception, because the exception depends on the essoign day, and consequently the day of the return and of the appearance must be the same. The case of essoign, exception, return, and appearance-days, concerns only original writs, and the plaintiffs and defendants therein; there if the defendant appears the 'quarto die post,' his appearance shall be accepted as good, and no further process made against him. But whoever heard that a jury were essoigned? There are several other authorities for this. Dalton, 415. 2d. Instit. 125 & 33 H. 6, 5. *b.* that no essoign lies upon a Venire Facias; and the essoign was quashed.

L. C. J. This you now offer will set aside all the proceedings either on the plea side, or the crown side.

Mr. *Ketelbey.* There is a case reported in the Year-Book, Mich. 33 Henry 6, fol. 35, 36, and abridged in Brooke, title Nisi Prius Pl. 32. It was disputed by the judges of the bench, and at first there was a difference of opinion among them; but at last it was unanimously resolved, that the Nisi Prius was not well taken. I will state the case as it appears in the year-book and the abridgment. There was a writ of Nisi Prius made with a certain return, and the justices tried the issue upon a day mense

during the interval between the 'quarto die post,' and the return of the writ. This was objected to, and said to be a mis-trial; and afterwards the judges agreed in their opinion, that it was a mis-trial, because it was not upon the return-day of the writ of Nisi Prius; and if not upon that day, the trial ought not to have been at all. And I don't apprehend any difference between that case and this, but only that was at Nisi Prius, and this a trial in bank. There is no continuance lies on a Venire Facias; and if so, I shall submit it, whether there is any day of appearance.

Just. Eyre. Sure there is a day of appearance on the Venire Facias; the proceedings in this case are like those upon an original. The same day which is the day of appearance for the party upon an original is the day of appearance for the jury upon a Venire.

Mr. Ketelbey. I believe it will be hard for Mr. Harcourt to shew where there is an essoign on a Venire Facias.

L. C. J. We have heard already what Mr. Harcourt hath said. I desire Mr. Simmonds may inform you how it is on the civil side.

Mr. Simmonds. Our process where the suit is commenced by bill, is returned on a day certain in court; that doth not respect this case.

L. C. J. How is it when it is by original?

Mr. Simmonds. Where it is by original, it is always returnable as the process is in the Common Pleas; and the day of the appearance of the jury, I take to be the 'quarto die post.'

Mr. Harcourt. If this was to be a discontinuance, what will become of all the records where the proceedings are at general returns, and which are tried on the Distringas, which always bears teste the 'quarto die post' after the return of the Venire? Every one of these records, which are many every term, would be discontinued.

L. C. J. You can't but be sensible that there is nothing in this exception.

Serj. Pengelly. There is no foundation for it in practice.

L. C. J. You need not labour it.

Serj. Pengelly. The sheriff, or the jury, are not amerciable, though they did not appear on the day of the return, if the jury do appear upon the 'quarto die post;' that shews it——

Att. Gen. If this objection prevails, it will overturn all the settled course of trials at bar.

Prisoner. One thing I would humbly offer to your lordship. I have not had my books by me, but only what occurs to my memory, I cannot be so exact as I ought to be. This overt-act in Essex of treason found by the jury to be so, I humbly apprehend, and I offer it to your lordship's judgment, in law is no overt-act at all. All the reason, I shall humbly offer to your lordship, that though it hath been said, that there was a consulting and agreeing in order to levy war, yet it doth not appear that war to be levied was such a war as in the law is adjudged to be treason. My lord, this differs from the levying war itself. An intention and consultation, or a conspiracy barely to levy war, unless war be levied, it is no treason. If it be a consultation to levy war against the king's person, to imprison the king, to dethrone and murder him, it ever hath been adjudged to be treason. If it be only a consulting to levy war, as if to agree to break open meeting-houses, to throw down houses, was the same as doing of it. There must be a war that is levied, or else it is no treason. Not only that, but I beg leave to say one word more. In my case, all the evidence given in respect of this overt-act in Essex, there is no foundation for it; and if there is no overt-act in Essex, no overt-act elsewhere can affect me. It stands on the evidence only of Mr. Lynch: he talks of a declaration. Who read it? The only two things are, a discourse between us, and a declaration which I gave him to read. If that, as I humbly submit it, be an act of treason, it is carrying the matter further than it hath been in those few cases I beg leave to mention that just occur to my memory. If I state them wrong, I shall be sorry. The case of College the Oxford joiner.* It was asked the Court, do you take my words distinct from my actions? No, says the Court, we do not do so. You declared you would go down to Oxford, and assassinate the king's person. In order to that, you went down with pistols before you. That at that time was declared to be an overt-act; the going down to Oxford in that manner; and the Court seemed to rely upon it, as the overt-act of the treason, and not the talking here, or conspiring that he would assassinate the king, but the going down in a hostile manner. So likewise in the case of my lord Preston; there the question was, whether those letters that were found with him in the ship; whether that was an overt-act of treason? The judges seemed to be of opinion, that the taking those letters with him as he was going to France, and there to consult the stirring up an insurrection here, and to invite the French king to invade us, was an overt-act of treason. But there is a stronger case, the case of my lord Russel.† He was indicted, as I am, for compassing and imagining the death of the king. The overt-act laid in the indictment to manifest that intention, was, that he, with the rest of the conspirators, consulted to seize upon the king's guards: in pursuance to that discourse and conspiracy which they had had, it appeared that sir Thomas Armstrong was sent to take a view of the guards in order to carry on the design. Notwithstanding there was a pursuing of their design of seizing the king's guards, in sending sir Thomas Armstrong to view them, yet the case was thought so very hard in respect to my lord Russel, that his attainder was reversed by an act of parliament. Therefore I only argue, with great submission, that in my case, where nothing is done but accidentally calling in at the Green Man, staying a little while there,

* Vol. 8, p. 550, of this Collection.

† Vol. 9, p. 578, of this Collection.

and, as hath been sworn, here was nothing but a mere discourse, and then I gave him a declaration to read. If I did so, it was only words. As to the second, it was nothing but publishing a libel. And shall this be a foundation to deprive me of my life and estate, to the utter ruin of myself and family? It is an unprecedented thing, hath it ever been? Therefore I hope your lordship, before you give any judgment in this matter, will take it into your consideration, whether any thing done in Essex doth amount to an overt-act of treason.

Mr. *Hungerford.* My lord, I humbly hope, as it is my duty to do what service I can to my client, and as it is in case of life, that I shall have your lordship's indulgence for a few words. My lord, he hath justly observed——

Serj. *Pengelly.* My lord, I would not interrupt Mr. Layer, because it may be supposed he is not so well acquainted with the method of proceeding. But I hope I may take the liberty to interrupt his counsel, who know by very great experience the method of proceedings, that they are not now to insist on the nature of the evidence, whether the evidence that hath been given is sufficient to maintain the indictment; that is not the business of this day. If they have any thing to offer, any objections to make in arrest of judgment, that is the business of the day: but to arraign the proceedings upon the trial, as it is said that the evidence given did not amount to a consultation, or to prove any overt-act of the treason alleged, I don't apprehend it to be proper at this time: I did not interrupt the prisoner himself; but I hope his counsel, who know the method of proceeding better, in cases of high-treason, shall not be permitted to go on in that manner.

Att. Gen. The gentlemen that are counsel for the prisoner know very well, that the evidence given on the trial is not now before your lordship; the single question that can now be made is, whether the indictment is good, and the facts charged and found by the jury, are well laid, and do amount to sufficient overt-acts of the high-treason, of which the prisoner stands indicted? Mr. Layer hath been giving an account of the witnesses, and making observations on the things which they swore; he was borne with: but the gentlemen that are his counsel, seem to be opening in the same manner, but as to them, we must insist upon it, that they should be confined to what is proper, and apply themselves to move in arrest of judgment, if they can find any thing upon the face of the record of which they can take advantage. But I think they are not entitled to go on with observations upon the evidence in the manner they were beginning.

Mr. *Hungerford.* I assure your lordship I did not design it, I did not intend to recapitulate any part of the evidence, or to observe upon it. And therefore there was no occasion for the caution. I thank your lordship for the indulgence you give me, and I will conform myself to the rules the king's counsel prescribe, to observe upon nothing but the record.

My lord, the indictment is in this manner; the species of the treason laid to the charge of the prisoner, is the compassing and imagining the death of the king. The first overt-act of that treason, is, that he did meet, consult, conspire and agree to raise a rebellion, and a 'guerram' in the kingdom, which is no overt-act of compassing and imagining the death of the king.

I know how the authorities have been; but in the case of life, your lordship will give me leave to observe, that by the statute of 25 Edw. 3, compassing and imagining the death of the king——

L. C. J. Mr. Hungerford, we would hear you in any thing that is proper, but consider if you are not offering a matter in arrest of judgment that hath been determined against you a hundred times. Hath it not been constantly allowed as an overt act of treason in compassing and imagining the death of the king, if the parties did meet, consult and agree to levy war? Hath it not been constantly agreed, and doth it not stand allowed to be so? Now to persuade us at this time to overthrow those resolutions taken by our predecessors, is such a thing as is not right. Do you think we will give a judgment contrary to what our learned predecessors have given in cases of the greatest moment? If I thought it was of any effect, I should not grudge spending time to hear you, but you must agree, it hath been over-ruled a hundred times.*

Just. *Eyre.* It hath been settled a great many times, particularly in the case of Dorrel, Gordon and Kerr, in which it was argued over and over again, and the Court was of opinion that the consulting and agreeing to levy war, was an overt act of treason in compassing and imagining the death of the king, and gave judgment accordingly.

Just. *Fortescue Aland.* Mr. Ketelbey was counsel for the prisoners in that case, which was in this Court in the 1st year of this king, when this objection was made; and very well knows, that the Court upon that occasion said, that they ought not to have suffered this matter to be made a question, for that it was arraigning the judgments of very many learned judges.

Just. *Powys.* No one thing relating to treason is more settled; and in that case, as hath been mentioned, it was agreed, and it was the judgment of all the judges that tried that cause.

Mr. *Hungerford.* My lord, I humbly hope——

Just. *Eyre.* It must not be admitted, we must not suffer so plain a point to be disputed; it is not only mis-spending of time, but shaking

* As to this matter, see in this Collection the case of lord Preston and others, and of Harding, vol. 12, p. 645, of Friend, vol. 13, p. 1, of lord George Gordon, A. D. 1780, of Hardy, and of Horne Tooke, A. D. 1794. See, also, East's Pl. Cr. chap. 2, s. 9, and the stat. 36 G. 3, c. 7, and the other authorities there cited.

what has been established by every trial, in which any thing of this kind has been mentioned, from the case of the Regicides to this day.

Just. Powys. In the cases of the Regicides, these matters are printed in Keyling.

L. C. J. And in all the trials ever since, there is scarce one case hath happened, where the case hath been for compassing and imagining the death of the king, but that it hath been laid for an overt act, that the party charged, did consult and agree to levy war to bring his wicked intentions to effect.

Mr. *Hungerford.* There is no doubt, but that the Regicides were the worst and most notorious criminals that were ever brought before a court of justice; and yet there is one circumstance of those trials, quoted in the very book which Mr. Justice Powys mentions, which was never practised before, and I am sure never was since; that is, the judges who were to try the criminals, and the king's counsel who were to prosecute them, met and consulted together to form and fix the accusation.

But if it is your lordship's pleasure, I shall speak no further to that matter.

L. C. J. You have the opinion of the Court, and I dare say it is your own opinion; and as the resolutions are so positive, it is not for us to make indictments at this day.

Mr. *Hungerford.* I shall not press it any further. There is another thing arises upon another overt act laid in the indictment, that is, 'Publicavit quoddam scriptum,' &c. I apprehend the substance of the 'quoddam scriptum,' ought to be mentioned in the indictment.

L. C. J. It is mentioned in effect, that it was to excite people to a rebellion and an insurrection.

Mr. *Hungerford.* Your lordship will observe, that the criminal words in the 'scriptum' are not mentioned in the indictment; and by the rule given by all the judges of England in Dr. Sacheverell's case, in all accusations, whether by information or indictment, the words supposed to be criminal ought to be inserted; and since that is not done in this case, the overt act is not well laid, and the judgment ought to be arrested.

L. C. J. You know, Mr. Hungerford, if but one overt act is well-laid and proved, it is sufficient.

I don't know, I was sorry you forced me to remember what I would willingly have forgot. I remember, on that occasion, you was pleased to compare it to a ballad, which is an expression that ought not to be used. Is that a thing, when a prisoner is on trial for his life, and a matter of insurrection is intended against the king, to be treated in so ludicrous a manner? It is laid as an overt act of treason, and what is an overt act of treason, if a man's publishing a traitorous libel, and exciting persons to a rebellion and insurrection against the king is not? This is undoubtedly so: and when we are upon this consideration, to compare it to a ballad, and say he might as well publish a ballad, and lay it as an overt act of treason in the indictment: it is an expression that ought not to be used, and I was very sorry you did use it.

Mr. *Hungerford.* I am sure I did not say he might as well publish a ballad and make it treason; I have a greater duty, and a more tender regard to his sacred majesty, and the quiet of his kingdom and people, than to express myself so. What I then observed, as near as I can recollect, was, that there were but few minutes to transact the business at the Green Man; that what was done could not amount to the publishing of a declaration, when there was nothing done but a man's reading to himself: I knew the whole accusation did turn upon that transaction at the Green Man; and in service to my client, I thought it my business to make it appear as inconsiderable as I could; and if in this I have offended your lordship, or the Court, I am heartily sorry for it, and beg their pardon.

Mr. *Ketelbey.* If your lordship please to favour me with a few words.

I shall be very tender of offering to your lordship any thing on this indictment, which hath been over-ruled in any of the cases where I have been before concerned; whether conspiring to levy war, unless war be actually levied, is an overt act of high treason, was mentioned on the trial of Dorrel, Gordon and Kerr, and I think took that among other exceptions in arrest of judgment, which were not allowed; but the statute of 13 Eliz. cap. 1, was not at that time mentioned; and I have some other matters to offer on that head, if it is now open to me.

L. C. J. Consider a little how you treat the Court; the objection hath been solemnly taken in this Court, argued and adjudged by this Court, and now you come to arraign that judgment that was then given.

Mr. *Ketelbey.* I shall go off from that, and say no more upon it, since your lordship is of opinion that it is a point settled. But, my lord, I must beg leave to take notice of what Mr. Attorney has observed relating to the five overt acts laid in the indictment, and submit to your lordship; for I don't know that it was ever determined otherwise, but that if one of the overt acts appears to be bad, judgment must be arrested.

L. C. J. Alas! quite the contrary: I believe you will find in Rookwood's trial, which you have in your hand: there it is said, if one overt act held, the indictment is good.

Mr. *Ketelbey.* If I am not mistaken, in sir John Freind's case,* it was not so: we can't take upon us to say, that all the overt acts are wrong. Is it not like an action in a civil case, where there are several counts in the delaration? If there be one wrong, that will stay judgment for the whole.

L. C. J. Because it is an entire declaration; and the jury, instead of giving damages on one

* See the Case, vol. 13, p. 1.

and, as hath been sworn, here was nothing but a mere discourse, and then I gave him a declaration to read. If I did so, it was only words. As to the second, it was nothing but publishing a libel. And shall this be a foundation to deprive me of my life and estate, to the utter ruin of myself and family? It is an unprecedented thing, hath it ever been? Therefore I hope your lordship, before you give any judgment in this matter, will take it into your consideration, whether any thing done in Essex doth amount to an overt-act of treason.

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Just. *Eyre.* It hath been settled a great many times, particularly in the case of Dorrel, Gordon and Kerr, in which it was argued over and over again, and the Court was of opinion that the consulting and agreeing to levy war, was an overt act of treason in compassing and imagining the death of the king, and gave judgment accordingly.

Just. *Fortescue Aland.* Mr. Ketelbey was counsel for the prisoners in that case, which was in this Court in the 1st year of this king, when this objection was made; and very well knows, that the Court upon that occasion said, that they ought not to have suffered this matter to be made a question, for that it was arraigning the judgments of very many learned judges.

Just. *Powys.* No one thing relating to treason is more settled; and in that case, as hath been mentioned, it was agreed, and it was the judgment of all the judges that tried that cause.

Mr. *Hungerford.* My lord, I humbly hope——

Just. *Eyre.* It must not be admitted, we must not suffer so plain a point to be disputed; it is not only mis-spending of time, but shaking

* As to this matter, see in this Collection the case of lord Preston and others, and of Harding, vol. 12, p. 645, of Friend, vol. 13, p. 1, of lord George Gordon, A. D. 1780, of Hardy, and of Horne Tooke, A. D. 1794. See, also, East's Pl. Cr. chap. 2, s. 9, and the stat. 36 G. 3, c. 7, and the other authorities there cited.

what has been established by every trial, in which any thing of this kind has been mentioned, from the case of the Regicides to this day.

Just. Powys. In the cases of the Regicides, these matters are printed in Keyling.

L. C. J. And in all the trials ever since, there is scarce one case hath happened, where the case hath been for compassing and imagining the death of the king, but that it hath been laid for an overt act, that the party charged, did consult and agree to levy war to bring his wicked intentions to effect.

Mr. *Hungerford.* There is no doubt, but that the Regicides were the worst and most notorious criminals that were ever brought before a court of justice; and yet there is one circumstance of those trials, quoted in the very book which Mr. Justice Powys mentions, which was never practised before, and I am sure never was since; that is, the judges who were to try the criminals, and the king's counsel who were to prosecute them, met and consulted together to form and fix the accusation.

But if it is your lordship's pleasure, I shall speak no further to that matter.

L. C. J. You have the opinion of the Court, and I dare say it is your own opinion; and as the resolutions are so positive, it is not for us to make indictments at this day.

Mr. *Hungerford.* I shall not press it any further. There is another thing arises upon another overt act laid in the indictment, that is, 'Publicavit quoddam scriptum,' &c. I apprehend the substance of the 'quoddam scriptum,' ought to be mentioned in the indictment.

L. C. J. It is mentioned in effect, that it was to excite people to a rebellion and an insurrection.

Mr. *Hungerford.* Your lordship will observe, that the criminal words in the 'scriptum' are not mentioned in the indictment; and by the rule given by all the judges of England in Dr. Sacheverell's case, in all accusations, whether by information or indictment, the words supposed to be criminal ought to be inserted; and since that is not done in this case, the overt act is not well laid, and the judgment ought to be arrested.

L. C. J. You know, Mr. Hungerford, if but one overt act is well-laid and proved, it is sufficient.

I don't know, I was sorry you forced me to remember what I would willingly have forgot. I remember, on that occasion, you was pleased to compare it to a ballad, which is an expression that ought not to be used. Is that a thing, when a prisoner is on trial for his life, and a matter of insurrection is intended against the king, to be treated in so ludicrous a manner? It is laid as an overt act of treason, and what is an overt act of treason, if a man's publishing a traitorous libel, and exciting persons to a rebellion and insurrection against the king is not? This is undoubtedly so: and when we are upon this consideration, to compare it to a ballad, and say he might as well publish a ballad, and lay it as an overt act of treason in the indictment: it is an expression that ought not to be used, and I was very sorry you did use it.

Mr. *Hungerford.* I am sure I did not say he might as well publish a ballad and make it treason; I have a greater duty, and a more tender regard to his sacred majesty, and the quiet of his kingdom and people, than to express myself so. What I then observed, as near as I can recollect, was, that there were but few minutes to transact the business at the Green Man; that what was done could not amount to the publishing of a declaration, when there was nothing done but a man's reading to himself: I knew the whole accusation did turn upon that transaction at the Green Man; and in service to my client, I thought it my business to make it appear as inconsiderable as I could; and if in this I have offended your lordship, or the Court, I am heartily sorry for it, and beg their pardon.

Mr. *Ketelbey.* If your lordship please to favour me with a few words.

I shall be very tender of offering to your lordship any thing on this indictment, which hath been over-ruled in any of the cases where I have been before concerned; whether conspiring to levy war, unless war be actually levied, is an overt act of high treason, was mentioned on the trial of Dorrel, Gordon and Kerr, and I think took that among other exceptions in arrest of judgment, which were not allowed; but the statute of 13 Eliz. cap. 1, was not at that time mentioned; and I have some other matters to offer on that head, if it is now open to me.

L. C. J. Consider a little how you treat the Court; the objection hath been solemnly taken in this Court, argued and adjudged by this Court, and now you come to arraign that judgment that was then given.

Mr. *Ketelbey.* I shall go off from that, and say no more upon it, since your lordship is of opinion that it is a point settled. But, my lord, I must beg leave to take notice of what Mr. Attorney has observed relating to the five overt acts laid in the indictment, and submit to your lordship; for I don't know that it was ever determined otherwise, but that if one of the overt acts appears to be bad, judgment must be arrested.

L. C. J. Alas! quite the contrary: I believe you will find in Rookwood's trial, which you have in your hand: there it is said, if one overt act held, the indictment is good.

Mr. *Ketelbey.* If I am not mistaken, in sir John Freind's case,* it was not so: we can't take upon us to say, that all the overt acts are wrong. Is it not like an action in a civil case, where there are several counts in the delaration? If there be one wrong, that will stay judgment for the whole.

L. C. J. Because it is an entire declaration; and the jury, instead of giving damages on one

* See the Case, vol. 13, p. 1.

because my counsel have given it up. But after your lordship hath passed sentence upon me, I hope and desire, for the sake of other people more than myself, those that I have had very great dealings and correspondence with, particularly my lord Londonderry, and several others, that I would do justice to, that your lordship would give me a reasonable time to make up their accounts; and when that is done, I hope your lordship will give me still a further time to make up that great account which I have in another place: When this is done, if his majesty doth not think fit graciously to continue me in this world, I will dare to die like a gentleman and a Christian, not doubting but that I shall meet with a double portion of mercy and justice in the next world, though it is denied me in this.

L. C. J. Christopher Layer, you have been indicted, and after a long examination and fair trial, have been convicted of high-treason in compassing and imagining the death of the king.

You have had all the indulgence and advantage that the law, would allow you. You have had counsel assigned you of your own chusing to advise you preparatory to your trial, and to assist you in making your defence at your trial.

These counsel have been permitted to say whatever they thought proper for your service; and I heartily wish that I could say that they had not exceeded, that they had not taken a greater liberty than they ought to have done; but however that was, the Court thought fit to permit it in them, that they might not be discouraged in offering any thing that was proper for your defence; we did not censure it then, on this consideration.

The jury that have found you guilty, are such as may be justly said, you yourself approved of; for though the law gives you a liberty of challenging five-and-thirty, you challenged but four-and-thirty; so you allowed the rest to be an indifferent jury to pass between the king and you as to your life and death.

The evidence on which you have been convicted, is the clearest and plainest that ever I heard. Your personal conferences with the Pretender at Rome; your constant correspondence with him and his agents afterwards; the scheme you had formed for the executing this treason; your confession of the greatest part of it before the lords of the council; and at last your flight when in the hands of justice, out of a window two pair of stairs, and the endeavours you used when retaken to corrupt and prevail with those that took you, by rewards, to let you go off, these are matters so very clear and plain, and did concur so exactly with the evidence of the witnesses, that it did not rest on their credit; the only question was, whether the jury did believe what you yourself had declared on your examination before the lords of the council, and by the Scheme that was found in your custody?

This being the nature of the evidence, I must, according to what is usual, put you in mind of the horrid wickedness you have been found guilty of.

The first matter projected to be done, was to seize the Tower of London, to set a guard at the Exchange and other places; to seize the Bank, and take from thence what money you had occasion for; by which the whole city of London, and in consequence the whole nation, would inevitably have been involved in blood and confusion; this was to have been the first fruits of this projected Scheme.

The next step to be taken by this execrable Scheme, was to seize the sacred person of the king: a king, who during the whole course of his reign hath been the most religious observer of our laws, the most careful preserver and protector of all our civil and religious rights, and the most merciful prince that ever sat on the throne of these kingdoms; yet this, this most excellent prince, was to be seized and made a sacrifice to popery and arbitrary power.

The next step to be taken, was to seize the prince; and when that was done, nobody can doubt but the young prince and princesses must and should have followed the fate of their father: So that the project must and would have ended in the destruction of all the royal family on this side the water; and when that was done, it was thought it would be an easy matter to set the Pretender on the throne.

This being done, the king and the royal family destroyed, and the Pretender advanced to the throne; what the consequence of that must and would have been, is obvious to every body; it must have ended in the entire destruction and dissolution of our most happy establishment and constitution; the happiest, I think, that ever any people enjoyed; it must have ended in the destruction of our laws, our liberties, our religion, and the church of England as by law established; and we must have become, from the most happy, the most miserable people on earth.

These horrid and execrable designs are so very heinous in themselves, that they hardly will admit of any circumstance of aggravation: But I must say, I can't avoid saying, that there are circumstances with respect to you, that make them more heinous, if possible. You were bred up to the law, and you must be supposed to know the excellency of our happy constitution and government, and the laws which you professed, which makes your crime much the greater.

Another matter, which is a great aggravation of your offence, is, that you were, or at least professed yourself a Protestant, and a member of the Church of England, whilst you engaged yourself in measures which must inevitably have destroyed that church which you profess yourself a member of.

These are the treasons which you are convicted of; and being so, the law adjudges you not fit to live; and the judgment of the law is and it is considered by the Court, that

'You, Christopher Layer, be led to the place

'from whence you came, and from thence you 'are to be drawn to the place of execution, and 'there you are to be hanged by the neck, but 'not till you are dead, but you are to be cut down 'alive, and your bowels to be taken out, and 'burnt before your face; your head is to be 'severed from your body, and your body to be 'divided into four quarters; and that your 'head and quarters be disposed of where his 'majesty shall think fit.'

Then the prisoner was carried back to the Tower of London; but on Wednesday November 28, the attorney and solicitor general moved for a rule for his execution, and that the Court would appoint a time and place for that purpose; and said, that the chief design of executing such criminals was to be an example to others not to offend in the like manner, and to deter them from committing treason; and therefore they moved that the execution might be in Middlesex though the fact was done in Essex, and said, that there were many precedents for executing criminals in such places as this court should think proper.

Thereupon the Court asked the clerk of the crown, if he knew any such precedents, who replied, that one Fitzpatrick,* who was an associate with the lord Audley, was executed in Middlesex for a fact committed in Wiltshire, and two other late precedents of the same nature.

So a rule was made to the lieutenant of the Tower, to deliver the prisoner to the sheriffs of London and Middlesex; and another rule to the said sheriffs to execute him on Monday December the 12th, at Tyburn.

Then the king's counsel moved the Court to alter the rule made the day before, for Mr. Morgan, the clergyman, to attend the prisoner, for that he was taken into custody upon suspicion of treason, and had given bond to appear in court this day.

The Court answered, that any clergyman should be admitted to the prisoner, who was a person of known honesty, integrity, and learning, but not such who might harden him in his iniquity in his last moments; so two more clergymen were joined in the rule, and the other two struck out.

Afterwards, and on that very day before he was to be executed, he had a respite, and there being some opinions, that he could not be executed by virtue of any warrant signed by the king; but that a new rule must be made in the Court of King's-bench for his execution, he was accordingly brought to the bar in Hilary-term following, and a rule was made for his execution on the 27th of March; but before that time he procured another respite, and afterwards another rule was made to execute him on the 17th day of May following, which was done accordingly.† He made a short speech to the assistants, wherein he avowed the principles for which he suffered, recommended the interest of the Pretender; and delivered a paper to the under-sheriff, and also another to a friend of his. His head was afterwards carried to Newgate, and was the next day fixt upon Temple-bar; but his quarters were delivered to his friends; who took care to get them decently interred. The paper above-mentioned was inclosed in a cover, superscribed,

To Mr. Walter Price, Under-sheriff, at his house in Castle-Yard, in Holborn; and was as followeth, viz.

Mr. Sheriff; I having previously resolved to employ all the time allowed me at the place of execution, in devotion, and making my peace with God, through the all-sufficient merits and mediation of my gracious Saviour, I have, instead of any speech I could make to the spectators, on this unfortunate occasion, committed my last thoughts of all worldly affairs to writing,* while I had some intervals of time for so doing; and have sent two authentic duplicates thereof, with my hand subscribed to the bottom of each sheet, to two trusty friends, to testify thereby to the world, in due time, and as occasion offers the true principles of both my religion and loyalty, as well as the unparalleled hardships and injustice I have lately met with; for which I pray God forgive the authors thereof.

And to the end, that none of my friends, who had access to me since I was sentenced to die, may be liable to come into any trouble upon the score of publishing my said writings, I sent the draughts thereof sealed up, together with draughts of two several letters directed to certain persons in the administration, to one of my friends abovementioned, desiring him to copy them all over fair, and return them to me: And then I subscribed them, and returned them to my friends, without letting the bearers, first or last, know any thing of the contents.

So, taking leave of this vain world, God in mercy receive my soul! Amen.†

Christopher Layer.

There is a story, that Layer's head, having fallen from the top of Temple bar, where it had been placed, was picked up by an attorney of the name of Pearce, who was an agent for the non-jurors; that Dr. Richard Rawlinson, the antiquary, for a large price obtained it from Pearce, preserved it as a precious relic, and by his will caused it to be buried in his right hand. Another version of this legend relates, that instead of Layer's, another's head was imposed on Rawlinson. See Nichols's Literary Anecdotes of the eighteenth century, vol. 5, p. 497, art. Rawlinson.

For the proceedings in the House of Lords respecting the printing of this Trial, see Parl. Hist. vol. 8, p. 54, *et seq.*

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* See his Case, vol. 3, p. 419.
† See 4 Black. Comm. 464.

* This writing never appeared in public. *Former Edition.* † See the next Article.

some of the lords of the council, "That he had been employed by George Kelly, and one Watson, whom he took to be the late earl marshal, and who was in England last spring, to draw up three several memorials to the regent of France, to solicit him to send forces to the assistance of the conspirators. That the last of these memorials was drawn up in December 1721, and contained a demand of 5,000 men, to be sent over by the regent to invade these kingdoms."

This is confirmed by unquestionable advices from France, the 19th of April last, in which it is expressly affirmed, "That repeated application had been made to the regent for some time past, to furnish only a body of 3,000 men, by the help of which the conspirators made no doubt but to be able to place the Pretender on the throne."

Layer, at his examination before a committee of lords of the council, confessed, "That being in discourse with lord Orrery, soon after his first acquaintance with him, (which was before the encampment) lord Orrery said, nothing could relieve the nation, but a restoration; and that he would be glad if he could contribute to bring it about: that it must be done by foreign forces, and could be done no other way. That he often asked lord Orrery, what methods they had taken to procure them? That lord Orrery said, they had friends abroad that had made application to the regent for assistance to bring about a revolution; but he does not know whom his lordship meant; general Dillon might be his correspondent for aught he knew: that lord Orrery likewise told him, the regent might be brought to wink at any thing, but was so perfidious that he was not to be trusted; and that the French had made a tool of the Pretender."

Layer repeated the same in part, at two other examinations before his trial, and has since confirmed to your committee, upon his examination at the Tower, "That lord Orrery declared himself constantly of opinion, that nothing could be done to any purpose in the Pretender's favour, without foreign forces."

About the latter end of April, a letter was intercepted here, coming from Spain, inclosing the copy of one from O—— to L——, which will be shewn in the sequel of this Report, to have been from the late duke of Ormond; in which Ormond says, "Pray tell Mrs. Chaumont, that since the parliament is dead and gone, I think it is a good time to make an effort, when the elector is gone to Hanover." It will appear from the sequel of this Report, that by Mrs. Chaumont is probably meant the Pretender.

On the 23rd of April another letter was intercepted, signed 1587. and directed to Mr. Jackson, which your committee have good reason to believe was from the bishop of Rochester to the Pretender, as will be shewn in the following part of this Report. In this letter he says, "notwithstanding this opportunity is elapsed, I agree with you another may offer before the end of the year, though not perhaps every way so favourable." This letter was writ on the 20th of April, when most of the elections were over, and consequently that opportunity was elapsed.

That an insurrection was thought of at the time of the elections, is farther confirmed from the following particulars; Layer confessed before the lords, "that Green the gunsmith being in company with lord North after dinner, and talking of 5,000 arms and 7,000 arms that were ready, said, When the Westminster mob were up, if they had had arms! Upon which lord North interrupted him, and said, don't talk, you are a citizen, you know there are no arms; but that the man insisted there were 5,000 arms ready in the city."

Neynoe declared, "That Tho. Carter, clerk, made two expeditions in the spring (during the elections) one into Cornwall, and another into the counties of Warwick, Nottingham, Derby and Stafford; and that upon Neynoe's blaming the riotous conduct at the Coventry election, Carter replied, Hang the election, you never saw fellows of such mettle, so well trained, so fit for business."

Among Mr. Dennys Kelly's papers was seised an exact list of the quarters of all his majesty's forces in Great Britain, about the time that they were drawn out of most of the great towns and boroughs, on account of the elections.

From all these circumstances the committee see reason to conclude, that the first design was to have been executed with the assistance of foreign forces, at the time of the elections; that the Pretender, the late duke of Ormond, lord Orrery, and the bishop of Rochester, were of this opinion; that memorials were drawn up here, to be presented to the regent for this purpose; and that those memorials were actually presented, or at least application made to the regent in consequence of them, by directions from persons in England; and that such dispositions have been made for this enterprise at that time, as broke out into riots at some of the elections: which must be allowed to have been no unfavourable juncture for such an attempt, considering the discontents occasioned by the late South Sea scheme, which the conspirators have all along flattered themselves they should be able to improve into a spirit of rebellion; and the liberties usually taken at such a season, when all the freeholders of England are necessarily and legally assembled together, and when the whole nation is too apt to be in a ferment, even in the quietest times.

This design failing, on account (as it is reasonable to believe) of the conspirators not being able to obtain the forces they solicited from abroad, and of their being themselves divided in opinion as to the time and manner of execution, their next endeavour was to attempt an insurrection at the time when they supposed his majesty would be going to Hanover.

Of the reality of this design your committee have found such evident and concurrent testi-

monies, that they think stronger could not reasonably be expected, in an affair where it was so much the interest of the conspirators to act with the utmost caution and secrecy.

It has already been observed, that the late duke of Ormond thought the time of the king's going for Germany a favourable opportunity for making an effort, and that the person who signs 1378, says, "Notwithstanding this opportunity is elapsed, I agree with you another may offer before the end of the year, though not perhaps every way so favourable."

Layer confessed to the lords at two several examinations previous to his trial, and has since confirmed to your committee, "That he made application to lord Orrery to stand god-father to his child for the Pretender, intending that this mark of kindness from the Pretender should serve as a credential to lord Orrery to induce him to converse freely with him, in relation to the Pretender's affairs: that their acquaintance having begun in this manner, lord Orrery sent to him to enquire into the Pretender's character and qualifications, and asked him several times, whether he had any recommendation from the Pretender to any person? That upon his answering No; his lordship told him, that he seemed to be an honest man, and people of his integrity should be always welcome to him, whether they had any credentials or no: that he, Layer, then gave his lordship an account of what had passed between the Pretender and him during his stay at Rome, and asked his lordship what hopes there were? To which his lordship answered, that there were hopes, for all the nation were generally for the Pretender, except such as had places, or money due to them from the government. That lord Orrery farther told him, that lord North, sir Harry Goring, lord Strafford and others were going to do a rash thing in favour of the Pretender, which he, lord Orrery, was sorry for, because it would prove abortive, and hinder its succeeding another time: that Layer asked him, who was to have the command? and lord Orrery told him, he believed lord North and Grey was to have the command, and that the said lord had a commission from the Pretender; that the lord Orrery called this design rash, because not duly concerted, nor supported by foreign forces, without which, he said, he thought they must be more than madmen to hope to do any thing to effect for the Pretender's service. That he, Layer, the next time he saw lord North and Grey, which was before the encampment of the troops, acquainted him with what lord Orrery had said about the rashness of the design; that lord North and Grey replied, lord Orrery was a timorous fellow, and was always making difficulties, and scheming out of his own brain; that he knew nothing, nor should know; but that it was his [lord North's] opinion, the Pretender might be restored by the people of England, without the assistance of any foreign force. That he, Layer, talked to lord North and Grey of his lordship's being general; but lord North said, he was not popular enough, that the duke of Ormond would be fit for it; and if they had him here, his lordship believed most of the soldiers would join him: that he, Layer, continued to press lord North and Grey on this head, by telling him, that he was fitter for a general, and was popular; the said lord answered, no, the duke of Ormond was the man, he was the soldiers' darling. That he, Layer, often talked of this affair to the lord North, being induced so to do, by the impatience he observed in him, and in lord Orrery, that something should be done."

Matthew Plunkett, serjeant of invalids, has deposed upon oath, "That Layer told him (in July last) that the duke of Ormond would come in a single ship with some officers, and that it had been done long ago, if the French ambassador had not been told of it, who told it again to the king."

It appears to your committee from several depositions on oath, as well as from informations and written intelligence, that in consequence of this design of bringing over the late duke of Ormond, captain Charles Halstead, a Lancashire man (who was concerned in the insurrection intended at Oxford in the year 1715,) set sail from the river for Bilboa, about the 19th day of March, 1721-22, on board the ship Phineas of Bristol, William Arnold, master, with a provision of arms and powder on board, which one of the sailors on his examination declared, "He apprehends to have been greater than was necessary for an ordinary trading voyage. That the said ship was hired at 100*l.* freight per month, 200*l.* being paid in advance (as Halstead himself owned,) and had no goods nor any passenger on board, except the said Halstead, who went by the name of Nowell, and was known to the master and sailors by that name only, during the voyage to Spain. That the said ship was cleared at the custom-house in ballast for Lisbon; but that when they came into the bay of Biscay, the master, who had orders to follow Nowell's directions, gave private instructions to the pilot to steer to Bilboa; that they arrived there on the 28th of March, O. S. and that Halstead went on shore, and lay that night at Mr. Brown's, an Irish merchant, and the next day went forward towards Madrid, being furnished with horses by the said Brown, on which journey he was absent about a fortnight; that during his absence, a report was current all over the town of Bilboa, and particularly among the convents, that the said ship was come to fetch over the duke of Ormond." And Thomas Carter, one of the sailors of the said ship, who was employed by Halstead to wait on him as a servant, has deposed upon oath, "That three days after the said Nowell's return, the deponent heard him propose to go to the above-named captain Arnold to carry the late duke of Ormond and four other passengers to England; which the said captain Arnold refusing to do, the said Nowell insisted, saying, the ship was his so long as he paid the hire of her; and the

wages and victualling, and they had high words upon it. Carter farther deposed, that Halstead received a letter directed to colonel Nowell Butler, which was the name the said Nowell went by when he was in Spain. That when the ship was released, they plied off and on about four hours off St. Andero, expecting somebody to come off in a boat; but nobody coming, and night drawing on, they made the best of their way to England, and arrived in the Downs the beginning of July last." Allison, who came over to England a passenger in the said ship, has deposed upon oath, "That he left Madrid on the 4th of June, N. S. and that some time before he came away, the late duke of Ormond, who had resided a considerable time at Madrid, had sent away his horses and equipage from thence, and put his servants on board-wages, and that it was reported he was to go to Ventosilla. That he, Allison, upon his coming to Bilboa, found the ship Phineas bound for England, but stopt; that he agreed to take his passage on board her; and going to the corregidor of Bilboa for a pass, he found there Mr. Brown a merchant, and one who went by the name of Nowell; that Brown asking the corregidor why the ship was stopt? He said, it was not the ship, but Nowell's person that was detained, by orders from Madrid; that he, Allison, heard a report at Bilboa, that the late duke of Ormond was on the coast in disguise, and that Nowell had been at Madrid, and come back again in 15 days; the expedition of which journey, and the ship's coming in ballast, had raised a suspicion in Bilboa, that Nowell came over to the late duke of Ormond, on account of the conspiracy. The sailors observed, that during Nowell's stay at Bilboa, brigadier Campbell (a person concerned in the Preston rebellion) was frequently on board with him, but did not care to own his name." The same particulars are confirmed by letters from sir Anthony Wescomb, who was sent to Spain to gain intelligence, with several other circumstances relating to ships, arms and recruits, provided for the Pretender's service in Spain.

During these transactions, colonel Stanhope, his majesty's ambassador at Madrid, who does not appear to have known any thing of this ship's being come to Bilboa, having received intelligence from other hands, that the duke of Ormond was preparing to set out for England with some Irish officers, in order to put himself at the head of the rebels, obtained orders from the court of Madrid, to hinder the late duke of Ormond's embarkation, as will appear more fully in the remaining part of this Report.

In consequence of these orders, the king of Spain's officers came on board the ship, and laid an embargo upon her for about a fortnight, till Halstead, finding himself disappointed of his design, agreed that part of a cargo of wool and iron should be put on board the said ship by Brown and Slinger; and then returned to England with one Maxwell, whom the sailors understood to be a relation of the late lord Marr's, and two other passengers, and arrived in the river about the 7th or 8th of July.

About the beginning of May, a letter was intercepted here coming from Spain, directed to Mons. Dumville, procureur, and inclosed under cover to one Wilmore, at Mr. Stokoe's bookseller near Charing Cross. Who is meant by the name Dumville, the committee have not been able to discover.

In this letter was enclosed the copy of a letter, which the committee have reason to believe was from the late duke of Ormond to some persons abroad, the initial letters of whose name is discovered by the decypherers to be L.

The letter to Dumville, as well as the copy of the late duke of Ormond's letter, was writ partly in cypher; and among the words out of cypher several fictitious names were made use of, which the committee observe is the case also in several others of the intercepted letters referred to them.

It was reasonable to expect, that in managing correspondences of so hazardous a nature, all sort of art and industry should be used, and all the help of cyphers and jargon called in, to disguise the real designs, and to conceal the true names of the persons concerned, in order to their avoiding the danger of legal conviction: but your committee likewise observe, that several of these disguises are so gross and obvious, that they only serve to betray themselves; others of them are explained by the skill of different decypherers, agreeing in the same explication; which explication is again confirmed by facts unknown to those persons at the time of the decyphering. Others are explained by cyphers and lists of fictitious names, seized on the conspirators themselves, as well as by comparing the several parts of their correspondence together; and others again by direct informations upon oath. And, as the degrees of evidence, in a search of this nature, must be various, the committee have taken all the care they can to distinguish what appears to them fully proved, from what is supported by strong and probable conjectures only.

In this letter to Dumville, dated the 27th of April 1722, (N. S.) mention is made of its being publicly known in Spain, by letters from Bilboa and other parts, "That a ship came to Bilboa, with an express to Ormond, in order to bring Ormond to England; that the said express went to the place where Ormond was; that this made so much noise, that it was necessary to send to England with all possible dispatch; that a ship's coming with ballast only gave occasion to those reports, and that in order to stifle them it was necessary to put in the ship goods for England; that this would be a considerable expence to Tom, who hopes that friends will consider it, and send him if possible a greater supply than the five thousand pounds that he wrote for in his of the 6th and 20th of April; that the bills must be sent directly to B——, and may be bought at the Exchange of London."

The committee are of opinion, that by B. is meant Brown, the Irish merchant at Bilboa, because the cargo was put on board by the said Brown and Slinger; and it appears by subsequent letters that this Brown had twelve thousand arms in his custody for the service of the late duke of Ormond. It is also proved by the mikors, that Halstead was frequently in company with this Brown and his nephews, and lay sometimes at his house.

Who is meant by Tom in the said letter, the committee will not take upon them to determine; but they believe it will appear probable to the House, from the connexion and other circumstances, that it must mean the late duke of Ormond.

The person that writes this letter to Dumville, adds, "That since Mrs. Chaumont cannot meet Ormond at any place on the road, it is absolutely necessary that Ormond should have as good a preparation of arms as can be had there, and in order to make it, he will want more money from friends."

The same person says, that he had that day received a letter, importing, "That M—— could get more arms if he had more money." The committee are of opinion, that by M—— is meant Morgan, who is mentioned in several letters from Spain, as intendant of the Pretender's ships at Cadiz, and active in procuring officers and arms; which letters are confirmed by the seizure of the ship Revolution at Genoa, of which it appears by captain Scot's letter from Genoa, that Morgan had the chief care, going by the name of Walton; which is again confirmed by a letter from sir Anthony Wescomb at Bilboa.

The person that writes to Dumville, farther adds, "That Ormond hopes Onslow and Hawley will send a part of the money they have raised directly to Ormond; for Ormond upon the hopes of it, has sent credit to M——; he desires Dumville to mind this, and not to lose a moment."

Who are meant by Onslow and Hawley, the committee cannot determine; but they are inclined to believe, that they are the same persons, who in another letter, enclosed to Wilmore soon after, and writ in the same cypher, are found by the decypherers to have the initial letters of their names G—— and N——; in which conjecture they are the more confirmed, by a cypher seized on John Plunkett, in which the real names beginning with G. are constantly designed by fictitious ones beginning with H. the letter immediately following in the alphabet, and the real names of the letter N. by others beginning with O.

In the letter to Dumville above-mentioned, was enclosed the copy of a letter from the late duke of Ormond to L. which was sent to Dumville as being in part an answer to one received from him; who is meant by L. the committee cannot determine.

In this letter, the late duke of Ormond mentions his having received an account from D—— (general Dillon probably), that he had procured ten thousand arms, and advises the joining stocks with D——, since they cannot have too many arms; and says he can only depend on two thousand arms from M—— (Morgan probably); but that he could have had more arms, if he had had more money.

The committee observe, that this account of 10,000 arms procured by D——, and of 2,000 by M——, agrees exactly with an account sent soon after from Mr. Stanhope at Madrid, and confirmed by sir Anthony Wescomb, that 12,000 arms were lodged in the hands of Brown at Bilboa for the Pretender's service; and that Morgan was ordered to the Bay of Biscay, in order to transport the said arms to England.

The committee take notice likewise, that the very same number of arms is mentioned in a letter, writ, as they have good reason to believe, by George Kelly, to general Dillon's secretary; and the arms are there spoken of, as provided by Mansfield's relations, which name George Kelly explained to Neynoe to mean the late duke of Ormond.

The circumstance of Kelly's mentioning these arms to Dillon's secretary, makes it probable, that by D. in Ormond's letter, is meant the said Dillon, who, as your committee are informed, is an Irish Roman Catholic, and quitted Ireland on the capitulation of Limerick, and is at present a lieutenant-general in the French service, and has the command of one of the Irish regiments in France; and he appears to your committee, from several parts of the intercepted correspondence, to have the chief management of the Pretender's affairs, and to be the principal agent and director of carrying on this conspiracy.

Ormond in his letter to L—— afterwards says, "That since the parliament is dead and gone, he thinks it will be a good time to make an effort when the elector is gone to Hanover; and adds, I hope you have agreed with D—— the time of going for England, and when that is fixed between Mrs Chaumont, and D——, you will let Ormond know the place of landing in England. I desire an express may be sent to me, with particular accounts of what is agreed on." This, the committee take notice, agrees with Mr. Stanhope's intelligence, that Ormond was going for England, and likewise with intelligence sent from Rome, that the Pretender was to embark, as soon as two officers, relations of the late duke of Ormond, should arrive at Porto Longone; which circumstance makes it not improbable, that by Mrs. Chaumont may be meant the Pretender.

In the same letter to L——, Ormond says, "I have ordered H——'s ship, that I depended on, to return to England; it was not proper to make use of it, for reasons not necessary to trouble you with. There was no message sent by him, because of the uncertainty of the time of his getting to England."

This passage, the committee are of opinion, evidently relates to Halstead's ship. Upon mentioning his sending back this ship, he immediately adds, "I have ordered M——'s ship

to come to A——;" which agrees exactly with Mr. Stanhope's account, that Morgan's ships were ordered to the bay of Biscay, to transport to England the arms above-mentioned, together with Ormond, and what officers could be got; and it appears by subsequent letters from sir Anthony Wescomb at Bilboa, that the said ships, under the command of Morgan, did put in at Sainto Andero, which the committee understand to be the place meant by A——, to which Ormond says he had ordered M——'s ship to come. The said ships having put in at Andero, and staid there fifteen days, is again confirmed by a letter from Genoa, writ by captain Gardiner, who commanded the ship Revolution lately taken.

Soon after this letter to Dumville, another was intercepted here coming from Spain, directed A Monsieur Dodsworth, not signed, enclosed under cover to Wilmore as the former, and writ in the same cypher; the most material paragraph of which is thus explained by the decypherers.

"I must again entreat you to use your utmost endeavours, to get the 5,000*l.* from friends returned to O—— directly; the hopes given by G—— to expect a great sum, and by N——, that he had raised 20,000*l.* induced O—— to supply M——, and to make other necessary provisions. If that money be not returned, it will fall heavy upon O——, and he will be disabled from answering the expectation of friends, therefore ought to be your first and greatest concern. All other actions are trifles in comparison of it; for the hopes of success depend principally on O——. I mentioned this in former letters, and friends are desired to return more than 5,000*l.* if possible. If they do, more arms and ammunition, and officers can be had here; and the end of raising money by friends, is to procure arms, ammunition and officers."

To whom these letters were writ does not appear; but the committee observe that they are writ in the same cypher with three letters, which they have grounds to believe were from the bishop of Rochester. They observe likewise that the same cypher is sometimes made use of by George Kelly.

Mr. Stokoe the bookseller being examined about Wilmore, under whose cover these letters to Dumville and Dodsworth came enclosed, could give no other account of him, but that he was one who once writ a letter in his shop, and desired him by a letter, dated Epsom the first of March, 1722, to take in such French letters as should come directed to him; and by another letter, dated Harwich the 14th of May, desired him to take in no more; that he, Stokoe, did receive two letters from abroad so directed, which were fetched away, and paid for by persons to him unknown.

That the late duke of Ormond was expected to head an insurrection in England, is farther confirmed by the following particulars:

Neynoe, upon his examination before a committee of lords of the council, declared, "That the first design in the spring was to have been executed in London by seizing the Tower, and that the late duke of Ormond was then to have landed in the river; but upon discovery of the plot, and the king's not going beyond sea, it was put off for some time; that the bishop of Rochester, lord Orrery, lord North, and sir Harry Goring, were the principal leaders and directors of the whole design; and that Watson (whom he took to be the late earl marshal) had told him, lord North and Grey was thought of for the command."

On the 29th of April, O. S. intelligence came from France, "That the week before the late duke of Ormond had made application to the regent by a person of great distinction, for leave to pass through France, under a pretence of going into Italy; but that the regent had absolutely refused him, and at the same time had dispatched the necessary orders to the frontiers of Spain, to hinder him from passing either openly or in disguise."

On the 2nd of May, O. S. sir Luke Schaub sent advice, "That one Lesley had been looking out for lodgings at Paris for the late duke of Ormond; and on the 9th, that alderman Barber carried with him bills of exchange for 50,000*l.* sterling for the Pretender; and that the same sum was sent to Ormond by another hand, to enable him to make the necessary preparations in Spain and Italy." The committee observe, that this agrees as to the division of the money, with a passage in another letter from Dillon's secretary to George Kelly, dated the second of May, N. S. which will be farther explained in its proper place.

On the 23rd of May, O. S. sir Luke Schaub sent advice, "That the late duke of Ormond was to set out from Madrid about the 20th of that month, with his family, without its being known whither he was going; that it was believed he would give out that he was going to settle at a certain distance from Madrid, from whence he might steal away afterwards unobserved."

On the 28th of May, O. S. Mr. Stanhope writes word from Madrid, "That having had intelligence to be relied on, that the late duke of Ormond intended speedily to pass into England, with a great number of Irish officers at that time in the service of his Catholic majesty, in order to put himself at the head of the rebels there, and for that purpose was to set out from Madrid the next day, under pretence of going for the rest of the summer to Ventosilla, a house of the duke of Medina Celi, half-way between Madrid and Bilboa, but in reality to be thereby readier to pass to that port, and with less suspicion to embark from thence for England, whenever matters should be ripe for his so doing; he made application to his Catholic majesty by the marquis de Grimaldo, for orders to be sent to all the ports of Spain, to prevent the said late duke's embarking with the officers above-mentioned, and received a letter from the marquis de

Grimaldo, (a copy of which is annexed to this Report) acquainting him, that the king of Spain had directed such orders to be issued, and was ready on all occasions, more particularly on this which regarded the quiet and tranquillity of his Britannic majesty's kingdoms, to contribute all in his power towards his majesty's satisfaction."

Andrew Pancier, formerly captain-lieutenant of lord Cobham's dragoons, has deposed upon oath, "That being grown intimately acquainted with Skeene (now in custody) a person related to Marr, and engaged in the rebellions of Preston and Glensheild, Skeene began to acquaint him, about June last, that there was a design carrying on in England for placing the Pretender on the throne, of which he at different times told him the following particulars: That six or eight battalions of Irish foot, double officered, were to have come over from Spain, which were quartered upon the coast of Gallicia for that purpose; that the nine Spanish men of war which have joined the Dutch, and four more to have been fitted out at Barcelona, and three at Alicant, (as he best remembered) being in all sixteen Spanish men of war, were to have been employed in this service. That these troops were to have landed either in Cornwall, or near Bristol: That there were 40,000 stand of arms in Great Britain, part in Scotland, other part in London, other part in Bristol, and other part in Cornwall. That there were 7 or 800 men, with officers among them, in London, subsisted, and in readiness for such an occasion. That a sum of 200,000*l.* had been raised by contribution for carrying on this design, and put into the management of the bishop of Rochester, who with the lord North and Grey were the leading men among them; and that the lord Strafford and lord Kinoule knew the thing. That the managers of this affair in Spain, were the late duke of Ormond and the late earl marishal; and those in France the late lord Marr, and lieutenant general Dillon. That the court of Spain was in their interest, but as to the regent and cardinal Du Bois, they could not tell what to make of them: That this design was to have been executed some time ago, but was then disappointed by the regent: That the late duke of Ormond, and the late earl marishal, were to have come with the troops beforementioned from Spain, and the Pretender about the same time was to have left Rome privately, and to have lain concealed somewhere near, from whence he would have come over when there had been a fair prospect of success. That as to any opposition they could expect, we had but 14,000 men in all, of which 3,000 were necessary to guard London, 3,000 more for Scotland, and 2,000 for the garrisons; so that the remainder would never dare to attack those who came from Spain: and, in the confusion, their (meaning the Pretender's) friends would have been able to have got together, and made a head. That in the conduct of this affair there passed little in writing, and only the four lords before mentioned, viz. the bishop of Rochester and lord North and Grey principally, and lord Strafford and lord Kinoule, were concerned in the management of it here. That the business was to have been done before the Dutch troops could come to our assistance."

The committee have laid these several particulars together, though of different dates, that the House may see at one view, the reason there is to believe, that the late duke of Ormond was to have landed in England with officers and arms about the time that it was generally supposed his majesty intended to go to Hanover. The reason of Ormond's not coming, is sufficiently explained by the orders issued at Madrid and in France, by the king's not going abroad, and by the discoveries, and disposition of the forces made in England. And notice is taken, in letters to one of his majesty's secretaries of state from Rome, that a person of great distinction at that place, had declared it as his opinion, that the grand project formed in the conclave for placing the Pretender on the throne of Britain, was going to be put in execution; but that the same person afterwards assigned four reasons for its having miscarried; which were the want of money, the suspected faith of the regent, the want of skill in those who were to conduct it, and the pusillanimity of the Pretender, who, to avoid hazarding his own person, proposed to send his child: which last particular is again mentioned in another letter from Rome.

The committee now return to shew what other evidences they have before them, of a design laid for beginning an insurrection in London, at the time when it was supposed the king intended to go to Hanover.

About the latter end of April, his majesty received intelligence from abroad, upon which he can entirely depend, "That a design was laid for bringing in the Pretender, which was thought to be so well concerted, and conducted by persons of such experience, that if the secret was but kept, as was proposed, the success was looked upon as infallible; and that it was to be put in execution about the end of April, or beginning of May." The original letter containing this intelligence, has been communicated to your committee, and an extract of it is annexed to this Report.

On the 29th of April, the same intelligence was repeated, with these farther particulars, "That the conspirators did no longer think it necessary to insist on foreign assistance, flattering themselves that great part of the king's own forces would declare in their favour. That they now contented themselves with desiring the regent should observe a neutrality between his majesty and the Pretender; and that lord Lansdowne was to present, or cause to be presented, a memorial to the regent to this effect, that day or the next. That the design was probably to be executed in London; that the beginning of May was the time fixed on; and that the Pretender was speedily to set out for England."

Your committee do not find that the above-mentioned memorial was presented to the regent; but in letters from Plunkett to Dillon they find the same repeated in these words; "If the regent stands neuter, we will soon bring the law-suit to bear:" which Layer explained to be the Pretender's cause.

On the 24th of April, O. S. Mr. Davenant, his majesty's minister in Italy, sent an express from Rome, with advice, "that the Pretender's adherents were making preparations in Cadiz, and other ports of Spain, for an attempt on England; that the Pretender was speedily to embark at Porto Longone, and was retired from Rome for that purpose:" And it appears, that the same advice was soon after confirmed to his majesty, by a foreign minister residing in England, who received the intelligence from a person of great distinction abroad, and communicated it to his majesty.

On the 9th of May, Mr. Craufurd, his majesty's resident at Paris, writes word, "that the Jacobites in France expected soon an insurrection in England, which was to be begun by the heads of their party here soon after his majesty's setting out for Hanover, and was to be supported by Irish officers and soldiers, who lay ready at Cadiz, besides such as should be able to pass over into England from France by stealth:" and in his letter of the 26th of May O. S. he adds, "that the grounds of this expectation were assurances given from England, that the conspirators would immediately make themselves masters of the Tower, and city of London."

This intelligence agrees with a paper delivered to the secretaries of state of July last, by one of the lords of his majesty's council, who, as they have certified, assured them that a person, whom he had good reason to believe to be deeply concerned in the conspiracy, came to him in the month of July, and brought him a paper, which he affirmed he had copied by stealth out of the scrutore of a noble lord, whom he refused to name; and that the said person writ out a fair copy of the paper in his presence, which contains minutes of resolutions taken at a consultation, and is in the following words:

"R. That the arms be dug up immediately, and dispersed in small parcels. Begin in Southwark, Whitechapel, Wapping, Holborn, and Smithfield. March into city. Possess the gates. Against the horse, barricades in the narrow streets, especially at both ends of Fleet-bridge, Shoe-lane, Fetter-lane and Chancery-lane. Possess St. Clement's church-yard by a party from Holborn. A strong barricade in the narrow part of that street. Line the two first stories. Bricks, stones, &c. may be useful in the upper rooms, and may be thrown by women and others unfit to bear arms. Lighters with ammunition under coals lie at Blackfriars and Milford-lane. No dependance or assistance from Westminster and those parts, except some few by water, the communication being cut off. Message to the lord mayor by three lords. Proclamation made to oblige all who shall not come in, to bring in their muskets, and militia arms. Declaration ready printed, to be dispersed among the people. Twenty-three officers of the Guards to be depended on: a great many others well-affected, especially the common centinels. Day resolved on April the 30th. R. That forty determined persons be immediately pitched upon, armed with swords and pistols, to execute all orders; and that for the subsistence of the said 40 gentlemen, money be advanced out of the fund, at the rate of 7*s.* per diem for man and horse. Commander in chief lord N. Time seven in the morning."

"Dis: C. W. M."

The committee make no doubt but the House will readily observe that this Scheme, drawn up in April, and delivered as aforesaid to one of the lords of the council in July last, has a near affinity with that of Layer, and appears to be the groundwork of it, though Layer denies his having ever seen any such paper of resolutions, or having received any instructions relating to his Scheme, except from Wilson a surgeon, Murphey a physician, and White a serjeant.

The committee likewise observe from this and Layer's Scheme, as well as from a letter of Sample's (of which notice will be taken in its place), that the involving the city of London in blood and confusion, appears to have been universally understood and agreed on among all the conspirators, as the first step to be taken, and the foundation of their future hopes.

By another paper delivered in July last by the same person, it appears, that when the stroke was struck in London, there were to be insurrections in several counties of England; and that the numbers of gentlemen and private men, to be depended on both in London and the country, were computed and set down: and the committee observe, that the extending the insurrection to the country, after London was seized, makes likewise a part of Layer's Scheme, and Sample's Letter.

The committee farther take notice that in these Schemes, as well as in Pancier's Deposition mention is made of great quantities of arms concealed for the use of the conspirators; and Layer having confessed at his examination before the lords, that he supposed there were arms provided, and that Green the gunsmith being in company with lord North, had mentioned 5,000 arms, and 7,000 arms, and insisted, in contradiction to lord North who bid him hold his tongue, that there were 5,000 arms ready in the city; the committee examined him particularly on this head, but could draw nothing more from him, than that Green had told captain Bonyn at lord North's, that he could help him to 5 or 7,000 arms at an hour's warning. And though your committee is fully satisfied that no care has been wanting elsewhere to discover these arms, and to defeat the conspiracy in so essential a circumstance; yet they cannot but think it a melancholy consi-

deration, that through the determined obstinacy of the conspirators, these endeavours have hitherto proved unsuccessful.

The committee observe farther, that in the paper of resolutions, mention is made of a fund of money provided, and of a great number of determined persons subsisted in London for the purposes of the Conspiracy, for the execution of which a day was likewise fixed on and appointed, and the commander in chief known. All which several particulars correspond exactly with the intelligence received at the same time from abroad, with Pancier's deposition, with what Layer owned lord Orrery had told him, that he believed lord North and Grey had a commission for commanding in chief; and with what Neynoe was told by Watson, that lord North and Grey was thought of for the command; as likewise with what was told Matthew Plunkett by Layer and John Plunkett, that lord North and Grey with others, were ready to head an insurrection.

Your committee having thus laid before you the general evidence, which convinces them that a design was formed by persons of distinction, to invade these kingdoms with a foreign force; that being disappointed in this expectation, they still persisted to make an attempt, with such officers and soldiers as could be procured privately from abroad; that the late duke of Ormond was to have landed for this purpose, and to have been followed by the Pretender; that arms and money were provided, and men subsisted for this service; that the insurrection was to have been begun in London, and thence to have been extended over the whole kingdom. They will now proceed more particularly to explain the several parts, which the leaders and inferior agents appear to have taken in conducting this design, as far as the same can be collected from the intercepted correspondence, and other papers referred to them, and from the examinations of the persons concerned; by which it will farther appear to the House, that the design was constantly prosecuted in all parts, without any other relaxation or intermission, than what the necessity of their affairs, and the discoveries made, obliged them to, in order to lay their measures deeper, and to make the success of them more certain: and that the enterprize, which was first calculated for the spring, was to have been afterwards put in execution at the breaking up of the camp, with the help of officers and soldiers from abroad, if they could be obtained; if not on the strength of such as they hoped to be able to corrupt and seduce among his majesty's own forces.

The leaders, in order (as it is natural to believe) to save themselves from the danger of legal conviction, chose to manage their correspondences by the intervention of persons of a meaner rank and figure, and of desperate fortunes; who, they hoped, might escape the observation of the government, being no otherwise considerable, than as the trust reposed in them made them so.

The committee think proper to take notice, that of these inferior agents, Layer appears to have been principally entrusted by lord North and Grey, and lord Orrery; and that Plunkett, who travelled with Layer to Rome, and whose treasonable practices and correspondences are closely connected with those of Layer, writes of himself as transacting part of his treasons with lord Orrery's clerk, and sending frequent accounts to the Pretender's agents abroad, of matters relating to the said lord.

George Kelly, a non-juring clergyman at present (though in the late queen's time, the committee is informed, he took the oaths to the government, and likewise the abjuration) appears to have been the person principally entrusted by the bishop of Rochester, and to have been employed in writing for him, and conveying letters to him, until the time that he, Kelly, was first taken into custody; after which it appears to the committee, that Thomas Carter, another non-juring clergyman, was entrusted and employed by the bishop in the same manner. And the committee observe, that George Kelly's correspondence has a close connexion with that of Dennis Kelly; and likewise that he appears to have been privy to Plunkett's and Neynoe's transactions.

The person employed by the duke of Norfolk, in conveying letters between him and George Jernegan, an agent of the Pretender's in Flanders, they find to be Mrs. Spelman, alias Yallop; who has likewise owned her conveying letters in the same manner between Mr. Harvey of Comb, and one Moor of Brownlow-street, and the said Jernegan. The committee observe, that John Sample acted under the direction of Mr. Sempill (commonly called lord Sempill) and his son at Paris, and that he wrote letters to the late duke of Ormond and the Pretender; but whom he transacted matters with in England, your committee do not find, by his examination, he would declare.

The committee farther observe, that this treasonable correspondence extended itself into Scotland; that William Erskine remitted money to France for the service of the Pretender's friends, and had a letter under the late lord Marr's hand found upon him, when he was taken into custody. That Mr. Cockran, now in custody, and others of that country yet unknown, were concerned in the same treasonable correspondence, carried on under the same fictitious names and expressions that are made use of by several of the correspondents in England; and that the same cant was likewise made use of, for the same purposes, by persons in Ireland. That all these several negociations and correspondences concurred in one common design, of stirring up an insurrection in these kingdoms, and placing the Pretender on the throne.

The committee have thought it proper to lay before the House such particulars as occur to them relating to each of these negociations, and to begin with those of Layer and Plunkett, as being closely connected with one another,

and set on foot earlier than it yet appears the others were; and as being likewise what the House thought fit first to refer to the examination of the committee: and by comparing the substance of the papers, and examinations of these two persons together, the House will be enabled, at one view, to form a true judgment of the sincerity of their confessions.

Before the committee examined Mr. Layer, they acquainted him that the several questions they intended to propound to him were reduced into writing, and that to avoid all mistakes, his answers should be so likewise, and before they were reported to the House he should have the perusal of them. Accordingly he did review his first confession to the committee, and made several additions and alterations, which will be taken notice of in their proper places.

Mr. Layer has owned partly to a committee of lords of the council before his trial, and partly to your committee (as will appear by reference had to his several examinations annexed to this Report), "That being bred up under an uncle who was a non-juror in Norfolk, he early imbibed those principles; that having a private affair to transact at Venice, this and a natural inclination and curiosity, which he had always had to see the Pretender, carried him on to Rome; that he set out from England on the 1st of April, 1721, in company with John Plunkett, now in custody, who went sometimes by the name of Rogers, whose expences he bore on account of his being useful to him, as speaking several languages. That he believes from the time of his first acquainting Plunkett with his intended journey (which was some months before their setting out), the said Plunkett, in order to magnify his services to the Pretender and his adherents, might write to general Dillon, and others of them, that he was going to Rome with a friend, and that his and his friend's journey would be of great consequence to the Pretender's affairs." But this particular he did not own till the review of his examination, when he found the committee were apprised that notice had been sent to Rome of his journey; for he insisted at first that his journey to Rome was purely accidental, and not concerted with the Pretender or any of his agents.

He farther owned, "that in their way to Italy, they passed through Antwerp, and that Plunkett there received a letter from general Dillon, which he shewed to Layer, directing them whom to apply to on their arrival at Rome, to introduce them to the Pretender." And on his reviewing his examination, when he found your committee were in possession of that letter, he owned, "That Francis Kennedy was the person they were directed by Dillon to apply to." A letter to that effect being found among Plunkett's papers, signed Dixwell, and the same being shewn by your committee to Layer, he declared, "That, to the best of his memory and belief, it was the very letter which was shewn to him by Plunkett at Antwerp, and affirmed by Plunkett to be from general Dillon: That he, Layer, believes Dillon goes by the names both of Dixwell and Digby; and that by the name of Joseph, in the said letter, is to be understood the Pretender.

"That he and Plunkett arrived at Rome the latter end of May 1721; and that after he had been a day at Rome, he sent to Francis Kennedy, secretary to the Pretender, to let him know he should be glad to see him, and to renew acquaintance with him."

Being asked when and where he first became acquainted with Francis Kennedy, he said, "That Kennedy has a brother, secretary to the late duke of Ormond, with which brother he had some acquaintance; and he thinks he has formerly been in Francis Kennedy's company at London along with the other brother: But as to this particular he cannot be positive." This is what he said relating to Kennedy at his first examination; and your committee observed by his behaviour, that he was under difficulties how to account for his applying to Kennedy, not having owned at that time he had any directions so to do, and being willing to have your committee believe, that his journey was not known of at Rome: But after Plunkett's examination, being uncertain what Plunkett might have confessed, he thought it proper to be more open upon this head, though contradicting in some measure his own former confession. He farther said, "That upon his sending to Francis Kennedy, as above, the said Kennedy came to his lodgings, which at the same time he said he was surprized at, it being in the face of all the English gentlemen; but that Kennedy told him, he needed not be uneasy at his coming to his lodgings openly, since he frequented the company of all the English gentlemen that came to Rome, without distinction. That at the first visit he desired Kennedy to introduce him to the Pretender, which he promised to do. That Kennedy came to him again the next night, and promised to introduce him to the Pretender privately in an evening, so that nobody should be able to prove his having been there."

And when he reviewed his examination, being asked by your committee, whether he knew of any letter to Plunkett, on their first coming to Rome; and being asked it in such a manner as let him understand that they knew from whom it came, and by whom it was writ; then, and not till then, he owned, "That he believed Kennedy delivered to Plunkett a letter under the Pretender's own hand, when Kennedy and Plunkett were alone together; for the next morning, as he, Layer, was in bed, in a room next adjoining to that where Plunkett lodged, Plunkett came to his bedside, and told him with seeming satisfaction, that he had got a letter under the king's (meaning the Pretender's) own hand; but that Kennedy never said one word of this letter to him, Layer. That Plunkett shewed him, Layer, the said letter, the whole of which he believes to have been writ in the same hand in which the blank receipts taken amongst his papers at Mrs. Mason's are signed, which he believes to be the Pretender's

own hand. That the substance of the letter was, that the bearer, Francis Kennedy, would introduce Plunkett to the Pretender. He said he could not be positive whether it was said in that letter, that Kennedy would introduce Plunkett only, or whether he himself was mentioned likewise to be introduced by Kennedy. That Plunkett told him he saw the Pretender the night before Layer was introduced to him."

This original letter has since been delivered to your committee, with the depositions relating to it; by which it appears, that Plunkett delivered it with other papers to one Mary Fagan, about Michaelmas last, which was near the time of Layer's being taken up; it is dated Thursday morn. signed James R. and directed to Mr. Plunkett, and is in the following words:

"This is only to direct you not to mention any thing of business to any body, till I have seen you. I have not much leisure to-night, expecting visits; but however I shall be glad to see you alone, and agree with you the most private way and manner for your companion and me to meet. The bearer Fr. Kennedy will bring you very privately to my house to-night about eight o'clock. "JAMES R."

"For Mr. Plunkett."

Your committee observe from this letter, as well as from other papers before them, what a degree of trust and confidence Plunkett was admitted to (notwithstanding he would endeavour by his present appearance to make it seem incredible) and perceive likewise by this letter, that his and Layer's journey to Rome had been represented to the Pretender as an affair of some importance.

Layer farther said, "That Kennedy, in his second visit, appointed him to meet him and colonel Haye in the square before the Pretender's house at ten the next night; that he met them there, and that they conducted him up a pair of back stairs to the Pretender."

Before the committee proceed to give an account of the conversation which Mr. Layer says he had with the Pretender, they think it proper to observe, that among Plunkett's papers were found two foul draughts of letters, which are sworn to be Plunkett's hand-writing, which give some light to the occasion of his and Layer's journey to Rome. The first is without date or direction, but appears evidently by the matter to have been writ to the same person, and about the same time as the second, which is dated the 22d of March, 1721, (about ten days before his and Layer's setting out) and directed to Mr. Jackson, which name is found in a cypher taken among Plunkett's papers, and sworn likewise to be his hand-writing, to denote the Pretender.

In the first of these foul draughts are these words: "There is one that sets out from Norfolk in a few days to let you know they (that is the Tanners, which he explained to Layer to mean the Tories) will stand by you on occasion: He only stays for me, and offers to bear my expences, so that I shall wait on you, and have the satisfaction to tell you by word of mouth what will be acceptable. He carries the List with him, no doubt on it you may have many such now."

In the letter to Jackson of the 22d of March are these words: "The gentleman I mentioned to you formerly, is come out of the country, with instructions to wait on you, and tender you his service. He offers to bear my expences."

From these passages compared with the letter received by Plunkett from Dillon at Antwerp, in which Dillon says, "I have sent Joseph advice of your journey, in which I wish you and your companion, though unknown, all happiness:" And then directs him to apply to Kennedy at Joseph's house for introduction; and compared likewise with the Pretender's letter to Plunkett, in which he directs him not to mention any thing of business to any body till he had seen him alone, in order to agree with him the most private way and manner for meeting his companion. It appears to your committee to be most evident, that Layer did not undertake so long and expensive a journey on uncertain prospects of private business, or out of mere curiosity; but that his journey was concerted with the Pretender's friends at home, and notified to the Pretender and his agents abroad; and that he carried over with him tenders of service to the Pretender from persons in England, as likewise a List of names, which was of such importance, and so well understood and expected at Rome, as to be mentioned by Plunkett in one of his letters to the Pretender, without any other description than barely that of the List.

The committee thought this observation the more necessary to be premised, because Layer did of himself own to them his giving to the Pretender a List of names, and the Pretender's asking him at a second interview, what he had to say in relation to his List; but yet endeavoured to explain that affair in such a manner, as your committee apprehend to be no ways consistent with Plunkett's foul draughts above mentioned; nor with the expectations that seem to have been raised in the Pretender and his agents, from Layer's and Plunkett's journey.

Layer told your committee, "That on his being introduced to the Pretender by Kennedy and Haye, as above-mentioned, the Pretender asked him the occasion of his coming, and whether he had any credentials from people in England; that he answered, Nothing but curiosity, and a desire of paying my duty to your majesty, has brought me hither. That the Pretender asked him, what lords he was acquainted with? To which he answered, none, but such as he was concerned with in the way of his profession. That the Pretender again expressed himself surprized at his having no credentials nor recommendations from any person in England; and said, This journey must have been very expensive to you, I believe it cannot cost you less than five hundred pounds. To which he an-

swered, That a private affair, which brought him to Venice, would have defrayed the expence, if it had succeeded; but that being disappointed in that, his inclination drew him on to Rome, to pay his duty to the Pretender, which he had long had in his thought, so took this opportunity of doing it. That one Plunkett, who was now in Rome with him, had often told him that he need not fear being introduced, or to that effect. That the Pretender said, he believed that Plunkett was a very honest man, and as proper a person as Layer could have had for a companion."

The committee observe, that what is here said concerning the Pretender's good opinion of Plunkett, and Plunkett's having given assurances to Layer of his being introduced, was not mentioned by Layer, till after Plunkett had been examined.

Layer farther said, that the Pretender again repeated his surprize at his having no recommendation from any person in England; but said, I am informed by Francis Kennedy, who knows you, that you have a good character, and for that reason you are welcome without any credentials. Yet your committee observe, that Dr. Blackerby Fairfax (an intimate acquaintance of Layer's) has deposed upon oath, "That Layer, since his return from Rome, told him, that while he was in private audience with the Pretender, a Scotch colonel broke in upon them, upon which the Pretender took him into another room; and that he, Layer, did there deliver his credentials to the Pretender."

Layer told the committee, "That the Pretender, after the discourse above-mentioned, asked him what county he was of, and what gentlemen he knew: That he answered he was of Norfolk, and knew all the Tory gentlemen of that county. That the Pretender asked him if he could recollect their names, and put them down in writing: To which he answered, he could easily do that, having brought with him memorandums of their names. That accordingly he drew up a fair List of the Tory gentlemen of Norfolk, and gave the said List to the Pretender at a second interview, thinking it would be agreeable to him. That the Pretender then asked him, whether he would see the queen (meaning his spouse), and promised she would admit him to kiss her hand.

"That about three weeks or a month after, Francis Kennedy and colonel Haye appointed him to meet them at the same place and time as before, and introduced him to the Pretender and his spouse. That the Pretender then called him to him, and asked him, whether he had any thing to say in relation to his List? that he answered, he forgot something which he had to communicate to his majesty; that the Pretender said, his wife would go out of the room presently, and soon after spoke to her in Italian, to withdraw, as he believes. That the Pretender then asked him, what he had to say? To which he replied, I have nothing so material to offer as ought to have procured me this great honour and indulgence; but if there be any service on earth I can do, I am most ready. That the Pretender said, What can you do? have you any acquaintance? To which he replied, that all the persons mentioned in his List were entirely devoted to the Pretender's interest, and all the gentlemen in England the same, except those in places of profit and trust, and that all parties were united in his interest. That the Pretender then asked him, What the gentlemen were whose names were on his List? To which he answered, they were all Tories, and that he had not put down any of the Roman Catholics of Norfolk, of whom there were several, men of estates. That the Pretender said, he believed the people of England were generally well-inclined to his cause, and pretty well convinced of their error; and then spoke of the discontents occasioned by the South-Sea scheme."

The committee observe that in the cypher which Layer received from sir William Ellis, the names of several Norfolk gentlemen are inserted; who, they think it probable, made a part of the List delivered by Layer to the Pretender; but at the same time they think it a justice due to those gentlemen, to observe, that Layer has owned to the committee, that, in order to magnify the number of the Pretender's friends, he did in several of the lists found among his papers insert the names of persons as well-affected to the Pretender's service, without having the least authority from them for so doing: and his false assertion to the Pretender, that all the gentlemen in England, except those in places of profit and trust, were entirely devoted to his interest, shews, that he made no distinction between the innocent and the guilty.

He next acquainted the committee, "That after the discourse before-mentioned with the Pretender in relation to the List, the Pretender commended his zeal, and told him, he might depend on any service he could do him. That he, Layer, then desired some token, by which he might obtain credit among the Pretender's friends of the nobility in England, and obtained that of the Pretender and his spouse's answering for his child;" which the committee avoid repeating, the account he gave them agreeing with that printed in his trial. He said, "That upon his desiring a letter to the duchess of Ormond, for her representing the Pretender's spouse, colonel Haye told him, no letter could be sent by him, but that care would be taken the duchess should stand. That he likewise gave him a message to the duchess, to this effect, 'that the duke of Ormond was well, and gone to Madrid,' by which he told him, she would understand the business he came about.

"That he returned to England about the end of August, or beginning of September, 1721, and waited on the duchess with his request; adding, that he hoped she was not altogether a stranger to that affair; to which she returned him no particular answer, but promised to stand god-mother, as he desired.

"That he then made application to lord Orrery to stand with her, by Thompson, whom

he took to be her chaplain, and by Swontfegger, lord Orrery's secretary, who understood that lord Orrery was desired to represent the Pretender. That the said lord sent to the duchess to know whether she stood? Who answered that she did; yet lord Orrery refused; but upon farther acquaintance, and hearing that lord North and Grey had consented to stand, he sent for Layer, and made excuses to him for his refusal. That he made use of this credential to lord Orrery, to induce him to converse freely with him in relation to the Pretender's affairs, having heard that the said lord was in the Pretender's interest.

"That upon his being refused by lord Orrery, he made his application to lord North and Grey, as mentioned in his trial, who stood; knowing, as he believes, that he stood for the Pretender. That this transaction was the beginning of his intimacy with lord North and Grey.

"That the first conversation he had with lord North, relating to the Pretender's affairs, was soon after the christening; that he then asked lord North, whether nothing could be undertaken in the Pretender's favour, his lordship being a military man? That his lordship replied, he believed the Pretender had friends enough, if they did but understand one another; that the army in general, and most of the half-pay officers, were well-inclined to the Pretender.

"That in July last, he, Layer, going down to Norfolk on the circuit, called on lord North at Epping, and again at his return; that he then asked the said lord again, whether nothing could be done in favour of the Pretender? That lord North said, how can any thing be done, while so great a body of forces is encamped under the very walls of London, besides the encampments in other parts of the kingdom? That Layer told him, he found most of the gentlemen in Norfolk that were Tories before, Jacobites now; that lord North and Grey said, it was the same in other counties, but that nothing could be done till the camp should break up. That upon Layer's pressing him to know whether any scheme was formed, lord North said, what does your friend lord Orrery think of things? That he answered, lord Orrery was of opinion, nothing could be done without a foreign force; that lord North and Grey replied, I cannot be of his opinion, I believe the people of England may do it of themselves.

"That Layer visiting him during the vacation, and staying two or three days at his house, continued to press him about forming a scheme; that lord North replied, we soldiers do not trouble ourselves much about schemes: be you quiet; something will be done." And at his examination before the lords, he owned, "Lord North and Grey said, if there be a rising, you shall not want men, or money, or arms."

Layer farther gave your committee an account of his becoming acquainted with Lynch, and of his carrying him to lord North and Grey, upon Lynch's telling him that he had something to propose to that lord that might be of great service to the Pretender's cause. But in giving an account of what passed between Lynch and him at the Green Man, your committee observed, that Layer took great pains to shew, that he did not communicate any papers to Lynch till after dinner, and that he then only shewed him memorandums, transcribed out of the prince of Orange's declaration, though Lynch has deposed upon oath, that mention was made in that paper of lord Cadogan's being seized, and remaining in the custody of the conspirators.

He owned to your committee his having carried Lynch to lord Cadogan's, but said, "He went thither only in relation to the purchase of an estate; that while they were waiting there in a room next the garden, Lynch viewed the garden and house, and said, I can easily seize you this general; but he denied their having had any previous discourse to this purpose, and said, the proposal arose from Lynch, and that he, Layer, was mad enough to make it part of his Scheme."

He said, "That when Lynch and he came to lord North and Grey's, his lordship asked him who Lynch was? That he said, he was an honest gentleman, recommended by a particular friend. That his lordship said, I wonder you would bring him, you know I am not easy nor free before strangers. That, however, lord North and Grey entertained Lynch civilly, and after supper enquired of him, whether he was in the army? To which Lynch answered, that he was bred up to merchandize, but had been with the Pretender in Scotland, and had the command of a ship under the king of Spain in the descent on Scotland; and enlarged much on his loyalty and zeal for the Pretender; but that lord North waved the discourse.

"That not long after, Lynch came down again to lord North and Grey's to Epping, while Layer was there a-shooting, and was civilly received by his lordship; and that after he was gone, Layer making apologies for Lynch's intruding, lord North and Grey said, Lynch was a good, honest fellow, and had entertained them with several merry stories."

The committee observed, that Layer, in relating what passed while Lynch was at lord North's, took so much pains to shew that lord North and Grey could have no private discourse with Lynch, that he left no room for the said lord North's having had any private discourse with him, Layer; which yet is inconsistent with his examination taken before the lords, as well as with his confession to your committee; in another part of which he owns, that while Lynch was at lord North's, he, Layer, shewed lord North some part of his Scheme, or heads relating to a declaration, as he was walking with him in the garden, and that they had some discourse upon it.

They observe likewise, that what he owned to the committee in relation to his introducing Lynch to lord North and Grey, falls very short

of what he confessed to the lords of the council on the same subject, previously to his trial. For he then said, "That Lynch having told him he would seize lord Cadogan, he carried Lynch to lord North and Grey's, and recommended him as a proper person for such an attempt. That he had before-hand proposed to lord North and Grey the carrying Lynch to him; that his lordship made a difficulty of seeing him; but that he, Layer, insisted on Lynch's being an honest man, fit to be employed in an insurrection for the Pretender; saying, Lynch would do any thing his lordship would have him, if there should be a rising: that he was fit to be sent with a party to seize any particular person, and that Lynch was impatient to see his lordship, Layer having told him, that his lordship was at the head of those designs."

Layer farther acquainted your committee, "That during his stay at lord North and Grey's at Epping, in the vacation, he again pressed his lordship to bring matters to some issue in favour of the Pretender, saying, if something be not done speedily, we shall all be taken up; that his lordship replied, is not the camp there still? If you can find some expedient it would be well, it is more than I can do. That Layer said, it was his opinion something might be done even during the encampment; and in order to discover whether lord North and Grey, and lord Orrery, had any scheme of their own, he drew up a Scheme himself, and having so done, lodged it with Mrs. Mason the day before he was taken up. That he intended to have communicated this Scheme to lord North and Grey, and lord Orrery; that he had some discourse with George Wilson, Dr. Murphey and others, on the subject of it, before it was drawn up." Being asked, who those others were? He said, "He could recollect no one else, but one who called himself serjeant White, whom he saw in company with Dr. Murphey at a tavern, and enquired of him, how far some parts of his Scheme were practicable?"

Being asked whether he had shewn this Scheme to any body? He said, "He did shew the heads of it to lord North and Grey, as he was walking with him in the garden, and that his lordship said, all was impracticable during the encampment: but that he never shewed his Scheme to any body, after it was drawn up in the form in which it was left with Mrs. Mason." Which last part of his answer, the committee observe may be evasive; since by his own account, as soon as he had drawn it up in that form, he lodged it with Mrs. Mason, and the day after was taken into custody.

The committee farther take notice, that the account he gave when he was questioned before the lords, whether he had shewn this Scheme to any body, are inconsistent and contradictory.

For in some part of that examination, he says, "Lord North and Grey would not hear of any thing till the camp was broke up; that the said lord would not see his Scheme; that the said lord said, he might keep his heads and his schemes to himself, for there was nothing to be done; that the said lord said there was time enough for forming a scheme;" and yet in another part of the same examination, he says, "Lord North did not dislike a scheme in general, but disapproved his Scheme."

Your committee beg leave to make the following observations on these passages, with a design to shew the insincerity and inconsistency of Layer's confessions, and without presuming to draw from them any other conclusions.

First, that if what Layer said was true, lord North must have perused and examined Layer's Scheme; since a man that did not dislike a scheme in general, could not be said to disapprove any particular scheme, unless he had first considered and examined it.

The committee observe farther, that the Scheme itself does not appear drawn up by a man of Layer's profession, assisted only, as he would insinuate, by Murphey a doctor of physic, Wilson a surgeon, and White a serjeant; and they cannot but think it very extraordinary, that his Scheme, drawn up in August or September, should have so great an affinity with the paper of Resolutions, for the digging up the arms, &c. mentioned above, which was drawn up the April before; and yet that Layer should have had no sight of that paper, nor have received any instructions or assistance from any persons, who were privy to those Resolutions, which he has declared to the committee he had not. And the committee are farther confirmed, that the Scheme was not drawn up by himself, from a particularity contained in a deposition of Dr. Blackerby Fairfax, who has sworn, that being for four or five years past employed in reading civil law and French to the said Layer, he recollects that Layer once asked him the meaning of the French motto, since prefixed to his Scheme in these words, "Au defaut de la force il faut employer la ruse;" and that upon Fairfax's explaining it to him, Layer said, it had been explained to him in the same manner by others. Neither does the Scheme appear drawn up at a venture, or merely with a view of engaging the Pretender's friends in the execution of this or some other scheme of their own, as Layer would insinuate; but several passages in it, compared with his other papers, make it probable, that the officers, serjeants, soldiers and arms mentioned in the Scheme, were first engaged and prepared, and then the said Scheme drawn up, for employing, in the best manner possible, such a force as had been so prepared.

This appears by comparing these words in the third paragraph of his Scheme ("And as there is eight serjeants, viz. Three of the first regiment of foot-guards, three of the second, and two of the third, all ready at an hour's warning to obey orders"), with two of his papers taken with his Scheme at Mrs. Mason's, viz. That which contains a list of thirteen serjeants of the guards, and another paper of

Layer's hand-writing, which contains eleven of there thirteen serjeants' names, and eight of those eleven serjeants have marks set against their names; so that it may be concluded from thence, that Layer had been able to engage but eight of the said thirteen serjeants; and therefore, in his Scheme, he mentions no more than eight serjeants.

The truth of this observation farther appears, by comparing Layer's said examination of the 1st of October, with the fourth paragraph of his Scheme; for in that examination, he says, that George Wilson had assured him, that two hundred of the soldiers in the camp had been spoken to, and were ready: and therefore Layer, in the said fourth paragraph of his Scheme, mentions only two hundred soldiers to be ready, and gives every one of his eight serjeants the command of five-and-twenty of the said two hundred men. From whence it may be concluded, that the officer that was to seize the Tower, and the arms for executing the Scheme, were also in a readiness.

It is farther remarkable, that Layer intended, as he owned to your committee, to communicate this Scheme in its present form to lord North and Grey, and lord Orrery; and yet several principal parts of it are not explained as things new, but referred to as matters already known and understood by the persons that were to see it, which could only be by previous consultations on that subject; for instance,

In the first paragraph it is said, "Let the general and only one officer of note in the camp agree upon a day for execution;" which must have appeared a most absurd beginning to any body that had not had some previous discourse or notice, of several officers in the camp engaged in the design. And the same observation will hold, with respect to the paragraphs where arms were mentioned as provided; which shews at least, that Layer believed those persons that were to see his Scheme, had heard of arms that were provided.

In the third paragraph, George Wilson is named in such a manner, as makes it probable he was already known to those who were to have a sight of this Scheme; and the committee observe that Layer confessed to the lords that he had told lord North and Grey, that Wilson was a fellow who had served in the army, had a general acquaintance, and was fit to be employed if his lordship would make use of him; to which the said lord replied, that when he had occasion he would employ him.

In the thirteenth paragraph of the Scheme it is said, "Let the general order four of the half-pay captains," without any farther description; which shews that Layer thought those to whom his Scheme was to be communicated, knew already of half-pay officers, that were engaged, agreeably to what lord North and Grey had told him, that most of the half-pay officers were well inclined.

In the nineteenth paragraph, he allots part of the execution of the design to the duke's barge-men, without any other addition: which is a manner of expression no one would have used in a paper to be shewn to persons, who were entire strangers to the affair.

Layer being in the course of his examination desired by the committee, to explain by what services or merit on his part, the shyness, which he would have it believed, the Pretender expressed towards him at his first coming to Rome, and the little acquaintance he then had with persons of distinction at home in the Pretender's interest, came soon after to be changed into so great a degree of confidence both at Rome and here, that he should be trusted with negociating blank receipts, under the Pretender's own hand, for unlimited sums; he told the committee, that during his stay at Rome, he contracted a friendship with sir William Ellis, who is a servant of the Pretender's, and that at his leaving Rome he settled a correspondence by cypher with the said Ellis, and acquainted him from time to time how the Pretender's affairs went on here: but the committee observe, that this general answer does by no means account for the terms of thankfulness and respect, with which Ellis writes to him from the Pretender, nor lay a sufficient foundation for his being admitted to so particular a trust. He said that in the course of his correspondence, he writ to Ellis that he had got acquainted with Burford and Symme (by the first of which names he meant lord Orrery, and by the latter lord North and Grey) and that if he had but blank receipts under the king's (meaning the Pretender's) own hand, he believed he could raise a considerable sum of money upon them, and put the Pretender's affairs in a great forwardness, by engaging a considerable part of the king's army in the Pretender's interest, with the money so raised. That he did not name any particular sum to Ellis, but hoped himself to have raised twenty thousand pounds by this method. He said he received from Ellis only the ten receipts taken among his papers at Mrs. Mason's; that he received them at different times by the post, and that the first of them came to his hands the latter end of July last. He said farther, he intended to have tried to put off these receipts among the Norfolk gentlemen named in the list which he gave to the Pretender, but that he never had spoke to any of them on this subject, nor received any assurance from them.

Being asked by the committee whether he had shewn these receipts to any other persons, or had any discourse with any body about raising money this way? He said, He believed he had mentioned to lord North and Grey, and lord Orrery, his having such receipts in his possession; and that the said lords told him, they believed they would be of little use, for that people would scarce venture to keep such receipts by them, or to have them in their custody, or words to that effect.

The committee take notice, that when he was examined before the lords, he prevaricated in relation to the cypher received from sir William Ellis, which he said was an old

cypher, in use before the Preston rebellion. But being shewn the names of several persons in that cypher, with the addition of their employments, which they did not enjoy at the time of that rebellion, nor some of them till very lately, he said that he applied to Plunkett for such names as were not in the old cypher; though the committee observe, that the whole cypher is in the same hand with the letters he owned he received from Ellis, and that the persons designed by late employments are not added or interlined, but placed in their alphabetical order in the body of the cypher. Being asked by the committee, whether he had seen or knew of any other cyphers? He answered in the negative; yet they observe that in the letter from sir William Ellis dated the 1st of October, he desired to make use of a pattern of lace of Mrs. Kinders, (which name he owned to the lords to mean Mrs. Hughes, nurse to the Pretender's child) sir William Ellis having lost or mislaid his own. Now the word 'pattern' in Ellis's cypher denotes cut-paper, which shews that Layer was privy to another cypher of that kind, in use among the Pretender's agents.

He likewise denied his knowing any fictitious names made use of by the Pretender or his agents for carrying on their correspondences, except those mentioned in his examinations before the lords; yet afterwards upon being asked by the committee, who was meant by Joseph in Dillon's letter to Plunkett? He confessed that he knew Joseph was one of the names made use of to denote the Pretender.

The committee farther observe, that the accounts he has given do by no means clear up several passages in sir William Ellis's letters, particularly one in the letter of the 30th of Jan. in which Ellis says, "That Layer having read over several times the paper he shewed him, and having a good memory, Ellis does not think it necessary to send a copy of it."

Layer being questioned by the committee about the lists of names taken at Mrs. Mason's, says he employed George Wilson and Dr. Murphey to enquire into the characters of officers and soldiers, and that he received most of the lists from Wilson, who told him, he believed if the late duke of Ormond were to come over, and lord Cadogan were shot, the soldiers mentioned in those lists would readily join Ormond in favour of the Pretender.

That Wilson made most of the marks against the names, to explain what men might or might not be confided in; from which circumstance your committee observe, that there were persons in those lists whom the Pretender's friends could not confide in. He told the committee, that Roath or Roach in the list No. 15, against whose name is set 1,000, is one whom he does not know; but that Murphey told him the said Roath or Roach, was a person of great interest in Staffordshire, and able to raise a thousand men. That the paper No. 11, at the bottom of which is writ 'enquire of North and Grey,' was a memorandum for enquiring of the said lord whether he knew cornet Redding in the service abroad.

Being shewn the two lists endorsed Briquett's list, and lord Yarmouth's list, he says Briquett is an eminent tobacconist in the city; that the said two lists only contain names of a jury for a relation's cause, but that he intended to shew those two lists to lord Orrery and lord North and Grey, as containing an account of men to be raised for the Pretender's service, in order to magnify to those lords the number of the Pretender's friends.

Being asked by the committee what was the occasion of his taking away his papers from Mrs. Mason's, when he went down to Epping, and what papers he at that time took out? He said, he only took out a paper containing a transcript of the prince of Orange's declaration, and some other memorandum papers. He farther added, that he was to have gone to lord North and Grey's to dinner the day that he was taken up, and that he sent his servant to the said lord's, to let him know he was arrested for high-treason, that his lordship might not be surprised at his not coming, and likewise that his lordship might provide for his own security: and before the lords he said, that he thought it reasonable to send this notice to lord North and Grey, apprehending that the government would seize the said lord immediately, on account of what had passed between his lordship and him.

It appears to your committee, that lord North and Grey did, in pursuance of this message from Layer, endeavour to provide for his own security, by making his escape. Layer sent that message to lord North and Grey on Tuesday the 18th of September, the day that he was taken into custody; and Hugh Floyd, his lordship's servant who attended him to Portsmouth, has declared, that lord North and Grey came to town from Epping on Wednesday the 19th of September, (which was the day after his receiving this message from Layer). That his lordship did not go to his own house, but to the King's-arms tavern in Paul's church-yard, and there dismissed him, Floyd, with orders to meet him at four in the morning on the Friday following, over against St. James's church in Piccadilly. That his lordship came at the time and place appointed, in a hired coach and six, without servants, and ordered the coachman to drive on to Kensington, and then to Brentford, and so on from town to town, and bid him, Hugh Floyd, have nothing to say to any body, nor take any notice that he was travelling with his lordship; so that in the whole journey to Portsmouth, he remembered no town but Kensington, Brentford, and Egham. That the second morning his lordship proceeded on his journey, with hired saddle-horses, without boots, with a guide, and several other minute circumstances, which may be seen in the examination of Hugh Floyd, and others, in relation to his lordship's journey to the isle of Wight, and to the manner of his endeavouring

to escape from thence; which serve to shew the precipitancy of his lordship's flight, and of what importance he thought it to take advantage as soon as possible of the notice given him by Layer.

Layer being asked by the committee from whom he received the names found in his own hand-writing among his papers, viz.

"Digby——Dillon.
Orrery——Burford.
Regent——Steel.
Tories——Tanners.
Whigs——Waggs.
Rogers——Plunkett."

said, the names of some persons whom he had occasion to mention in his letters to sir William Ellis, not being inserted in the cypher he had from Ellis, he applied to Plunkett, now in custody, to know by what names he should denote those persons, and that Plunkett gave him the six fictitious names above-mentioned; which names the committee find frequently repeated in Plunkett's letters and papers. Being asked if Plunkett ever explained to him who were meant by Burford's club (an expression which is often used by Plunkett in his letters to Dillon, as will be observed in its place)? He said, that Plunkett had told him, it was an appellation made use of by the Pretender and his agents, to denote a club of Tory lords and others, of which club lord Orrery was chairman. That Plunkett had named to him several persons of distinction, as members of that club, whose names Layer repeated to the committee, as contained in his examination entered to this Report. But the committee think it a justice due to several of the persons named by Layer, to observe, that the matters asserted of Burford's club in Plunkett's letters, seem utterly inconsistent with the known characters of some of those persons.

Layer being asked by the committee, whether he ever was employed by Plunkett to transact business with this or any other club, in Plunkett's absence (which appears to the committee to be asserted in one of Plunkett's letters), he absolutely denied it; but admitted that he went often to visit lord Orrery, and had frequent conversations with him relating to the Pretender's affairs, and the necessity of foreign assistance. And that Mr. Swortfegger, lord Orrery's secretary, came to him once and told him, that lord Orrery had left a note in writing, that if Layer came to town, he should come down to lord Orrery's in the country, which invitation he understood to be with an intention of their discoursing more at leisure about the Pretender's affairs, having never had any business with lord Orrery in the way of his profession, nor any other private business, that could give occasion to such a message; but that he did not go down at that time.

The committee observe, that a paper of memorandums was taken in the book-case of Swortfegger, secretary to lord Orrery, which he disowned to the lords on his examination; to be lord Orrery's own writing, in which the message to Layer is contained, and Swortfegger owned, that he delivered this message to Layer, and that he had sometimes seen Layer at his lordship's house.

Layer being shewn by the committee a letter taken among his papers, signed J. Plunkett, and dated the 8th of November, 1720, owned that he received that letter in Norfolk from Plunkett, now in custody; that it relates to the Pretender's affairs; that by Plunkett's friend in the said letter is meant, as he believes, Dillon; and by his law-suit, the Pretender's cause; in which sense the committee find the word law-suit frequently made use of in others of the intercepted letters. Layer farther owned that Plunkett gave his wife a letter of recommendation to general Dillon, when she went to Paris, which letter was signed Rogers.

Being asked by the committee, whether Plunkett had any conferences with the Pretender or his agents, during their stay at Rome, or had owned to him his being employed by the Pretender in England, he said that Plunkett had two private conferences with the Pretender, and conversed often with Francis Kennedy, secretary to the Pretender, and with others of his agents at Rome. That Plunkett has frequently owned to him, that he was employed in the Pretender's affairs, but never explained to him by which of the Pretender's agents particularly: and that he, Layer, never opened himself to Plunkett, in relation to the Pretender's affairs, after their return from Rome.

Yet the committee observe, that Plunkett in his letters to Dillon, speaks frequently of himself as privy to Layer's treasonable transactions, and grounds his recommendation of Mrs. Layer, on his knowledge of her husband's merit and industry in the service of the Pretender.

They likewise observe, that Layer owns he received the names of Digby, Burford, &c. from Plunkett since his return from Rome, which they think plainly implies, that Plunkett and he were privy to each other's treasonable correspondence.

The several particulars above-mentioned contain the substance of what Layer confessed on his examinations before the lords, and before your committee. And after this long account given by him, in which there appear so many and such convincing proofs of the conspiracy in general, your committee think it proper to observe, that though he affected a great openness and frankness, when such questions were put to him as tended only to a general discovery, to accuse himself, or such as he knew were escaped and fled out of the kingdom; yet when such questions were put to him, as he apprehended might affect or discover any others of the conspirators, he always gave answers with great shyness and reserve; and this care to say as little as possible that might affect others in a criminal way, joined with a desire to seem candid and ingenuous,

often produced the inconsistencies and contradictions, upon which the committee have thought it their duty to make the foregoing observations.

Your committee will now proceed to lay before you what they have been able to collect from the papers and examinations of John Plunkett, whose treasonable practices and correspondences, as has been observed before, appear to be so closely connected with those of Layer, that they give great light and confirmation to each other.

The committee observe, from a careful perusal of the letters and cyphers seized at Plunkett's lodgings, that he not only of late, but for many years past, has been employed in carrying on several treasonable correspondences with persons of high rank and distinction abroad; that a very great share of confidence has been placed in him by the Pretender, and several of the most considerable agents for him, and that he has been a principal actor in the late horrid conspiracy, and too much, as they have reason to believe, concerned in the blackest part of it. And though the evidence against him, in several particulars, is most full and undeniable, yet his behaviour on his examination was so hardened and obstinate, and attended with such bare-faced prevarications and falshoods, that the committee are very much confirmed in the opinion of his guilt, from the pains he took to deny with solemn imprecations, the most evident truths.

Layer confessed to the lords, that Plunkett recommended Wilson to him as a man of integrity; that Plunkett went by the name of Rogers in Italy and since; and signed the letter which he gave Mrs. Layer for general Dillon, by the name of Rogers. But the committee observe, that Layer let them remain in the error of believing that Plunkett's Christian name was James, till the question was put to him, on his second examination, in such a manner, that he found the committee was already apprized of his true name, which he then owned to be John. He farther owned, as has been observed above, that Plunkett received a letter under the Pretender's own hand at Rome, was twice in private conference with the Pretender, conversed with Kennedy and other agents of the Pretender, had assured him, Layer, of a good reception at Rome, was kindly spoken of by the Pretender, had owned to Layer his being employed in the Pretender's service, and his corresponding with Dillon, writ to Layer in Norfolk, in relation to the Pretender's affairs, and gave Layer fictitious names for Dillon, lord Orrery, the regent, &c. and among the rest, the name of Rogers, to denote him, Plunkett; which fictitious names the committee find all of them frequently used in Plunkett's papers.

It appears farther to the committee from depositions upon oath of Matthew Plunkett, that John Plunkett came to him in July last from Layer, to desire him to meet Layer at the Italian coffee-house in Russel-court, and named to him the same persons, as ready to head an insurrection, who were at some other time named to the said Matthew Plunkett by Layer on the same occasion.

That he farther asked Matthew Plunkett, whether he was well acquainted in the army among the soldiers? To which he replied, he knew many of them that had been with him in Spain and at Preston. That John Plunkett then told him, he came from Mr. Layer, and under the arch going into Drury-lane, desired him to pick out as many serjeants as he knew in the guards to recommend them to Mr. Layer: That the next time he saw Matthew Plunkett, which was in two or three days, he invited him to his chambers, and there told him Mr. Layer was a very good man, and the only one he could depend on to do him service: That the design on which he, Matthew Plunkett, was to introduce the soldiers to Layer's acquaintance, was to serve the Pretender by disciplining the mob, who were to rise in his favour. And that all the transactions of John Plunkett, with him, Matthew Plunkett, were, to engage him in person, and by his acquaintance among the soldiers to serve the Pretender: That John Plunkett meeting him afterwards in Covent Garden, asked him what he had done? To which he replied, he went on very well, and John Plunkett bid him go and tell Mr. Layer.

Matthew Plunkett farther deposes, That John Plunkett told him, the business (meaning the invasion and rebellion) had been done before, but that the French ambassador wrote to the regent, and the regent wrote it to king George (or words to that effect) and it was upon that account the army was sent to camp.

Dr. Blackerby Fairfax has deposed upon oath, that being in company with Plunkett and one Jeffereys, Jeffereys among other discourse said, Plunkett, give the Doctor a commission, adding, Plunkett has commissions, which Fairfax understood to mean commissions from the Pretender; but that Plunkett answered, The Doctor does not wear a sword.

The committee observe, that among Plunkett's papers was found a large cypher of names with fictitious names over against them, sworn to be all in Plunkett's own hand-writing, which cypher tallies with, and explains an original letter of the 23d of July, 1722, directed to Mr. Digby at Paris, and signed, J. Rogers, which was stopt at the post office, and is likewise sworn to be Plunkett's hand-writing. And several other letters directed to Digby, and signed J. Rogers, having likewise been opened and copied at the post-office, and then sent forwards, the clerks who were employed in copying them have sworn, that to the best of their memory and belief, the originals of the said letters were all writ in the same hand with that of the 23d of July, which was stopped, and is sworn to be Plunkett's hand-writing; and the said copies of letters treat of the same matters as the other, and contain the same ficti-

tious names which are found in the cypher sworn to be in Plunkett's hand-writing.

The committee are informed, that it was thought proper to stop but one of the original letters from Plunkett, and to suffer the others to go on; because it was judged that one was sufficient to discover the writer, and that the permitting the correspondence to be continued, might help the government to farther lights in this affair.

The committee likewise observe, that there was found among his papers an original letter signed Digby, dated the 20th of May, 1722, which is sworn by the clerks of the post-office to be the same which they opened and took a copy of, and which was directed to Mr. James Rogers, at Mr, Arthur's, banker in London, though the direction is since torn off. From this direction your committee observe, that his Christian name was disguised as well as his surname. The receipt of this letter is acknowledged in the copy of one to Digby signed J. Rogers, and dated the 21st of May, O. S. 1722.

The committee observe, that the original letter signed Digby, is in the same hand with another signed Dixwell, found also among Plunkett's papers, and owned by Layer to be the very letter shewn him by Plunkett at Antwerp, as from general Dillon; that the letter signed Digby is also in the same hand with another letter signed A. D. and directed to Robert Dillon, esq. which, as your committee are informed, was taken on one Blunt a Popish priest coming over from France, and owned by Blunt to be from general Dillon to his nephew. And the committee farther observe, that these three letters signed Digby, Dixwell, and A. D. are in the same hand with another signed C. Howell, found also among Plunkett's papers, which name of Howell is explained in Plunkett's cypher to mean Glasgow, whom the committee see reason to believe to be Christopher Glascock, an Irish officer in Dillon's regiment, who appears to be employed by Dillon in writing the treasonable letters signed by Dillon himself, as well as in writing others of the same kind, signed by fictitious names belonging to him, Glascock.

The committee observe, that in the copy of the letter, signed J. Rogers, directed to Digby, and dated the 5th of July, 1722, the person who writ that letter, says, that his fellow-traveller's wife parted hence the day before for Paris; and that he gave her a letter to him, Digby, which agrees with Layer's confession, that Plunkett did give Mrs. Layer a letter of recommendation to Dillon, signed Rogers, and that he received from Plunkett the name of Digby to denote general Dillon, which name was also confirmed to Layer by lord Orrery to mean Dillon. But that Dillon went by the name of Digby is put past all doubt, by a discovery made by Mr. Craufurd, his majesty's resident at Paris, who being ordered to discover the person meant by that name, made use of the following contrivance, mentioned thus in his own letter.

"I have just now found out who Mr. Digby is. I folded up a paper in the form of a letter, and sealed it, and directed it to Mr. Digby at Paris, then wrapt it up in a piece of waste paper with a memorandum in it, to be informed at Mr. Waters's, banker in Christine street, in what part of Paris Mr. Digby lived; I gave it thus made up to a sharp young fellow who speaks both French and English, and ordered him to go booted and a little dirtied to Mr. Waters's, to open before him the sham letter and read his memorandum, and to shew him the direction of the letter, and to desire him at the same time to send somebody with him, to conduct him to the place where it was to be delivered; that as soon as he should come to the door, where he was to deliver it, he should pretend to have left a packet at home, and making as if he would go back to fetch that packet, he should slip away from the person who shewed him thither. The thing succeeded better than I expected, for Waters was not at home, and my man acted his part so well, that Waters's chief book-keeper, without giving himself the trouble of going, wrote the direction for him upon my sham letter, in the manner your excellency will see in the enclosed. The book-keeper was very desirous to have the letter in order to deliver it himself; but my man insisted to deliver it with his own hand, and answered boldly to some questions which the book-keeper asked him, pretending he was to return the next day for England." The direction writ by Mr. Waters's book-keeper under the name of Digby was A Monsieur Dillon, Rue Colombier à l' Hotel d' Hollande; which, as your committee are informed, is the ordinary residence of lieutenant general Dillon.

Upon this discovery notice was sent from France, by Dillon and his agents, to his correspondents in England, to forbid them making use any more of that fictitious name, as shall be more fully taken notice of hereafter in this Report.

Notwithstanding all this evidence of Plunkett's corresponding with Dillon, when he was examined he denied his knowing general Dillon, or his having ever exchanged a letter with Dillon or his secretary in his life; he denied the letter to Digby of the 23d of July stopped at the post-office, and the cypher found at his lodgings to be his own hand-writing; he denied the receipt of the letters from Howell, Dixwell and Digby, found among his papers; but owned he had once received a letter from one Farelly a Popish priest, formerly governor to the duke of Berwick's children, signed by the name of Digby, and relating to stocks of Nicholas Wogan's and others. The committee observe that in this prevaricating answer he was labouring to account for the meaning of the word 'stocks,' which is mentioned in the letter from Digby, but will be shewn, in the sequel of this Report, to be meant in a very different sense from its natural import, and to mean the conspiracy only; and in Plunkett's own cypher the fictitious word 'brokers,' is ex-

plained agents. Upon pressing him farther to see if he would own the correspondence with Dillon, and acknowledge the letters the committee had such full evidence were his, they found that, in order to avoid the owning it, he run himself into such an evident absurdity and inconsistency, as appears to them a strong argument of his guilt.

He affirmed the cypher (which is sworn to be his own hand-writing) to belong to one Hugh Thomas, formerly of the herald's office, who had lodged in the same house with himself; that he had heard this Hugh Thomas own in company with Neynoe, that he corresponded with Dillon; that Hugh Thomas went by the name of Rogers, and that he, Plunkett, found this cypher, and several letters directed to Rogers, among Hugh Thomas's old books and papers. Being asked whether Hugh Thomas ever signed Plunkett? He said, not to his knowledge; and then endeavoured to impose on the committee, by telling them his own true name was Plunkett. Being asked what was become of this Thomas? He said, he had been dead a year and a half, and that he, Plunkett, could not keep him alive. But the committee observe, that the original letter to Digby, signed J. Rogers, is dated the 23rd of July last, and yet is in the same hand with that cypher, which he pretends to be the writing of a man who has been dead a year and a half. They observe likewise, that the letter from Digby directed to Rogers, is dated the 20th of May, 1722, and that most of the letters directed to Rogers (which Plunkett pretends were writ to Hugh Thomas) had the name of Rogers blotted out, and that of John Plunkett writ over it; and yet he owns, he never knew that Thomas went by the name of Plunkett: besides which, it is notorious, that Plunkett himself went by the name of Rogers in Italy, and Layer has owned not only that Plunkett went by that name, but that he signed Mrs. Layer's letter of recommendation to Dillon, by the name of Rogers, and also gave him, Layer, the name of Rogers to denote himself, at the same time that he gave him the name of Digby for general Dillon.

Your committee are of opinion, that these circumstances laid together, leave no room to doubt but that Plunkett writ and received the letter above-mentioned; the contents of which will be explained in their place.

Plunkett being shewn a letter without direction, signed N. Wogan, enclosing a cypher, which is called in the letter the duke of Berwick's key, he said, this letter and cypher likewise belonged to Hugh Thomas, who, he said, corresponded with the duke of Berwick about getting subscriptions to a book; which matter, the committee observe, neither needed any cypher, nor could well be treated of by the help of that. They likewise take notice, that Plunkett owned the receiving a letter from Digby in relation to the said Wogan's stocks, and that Wogan is inserted in Plunkett's own cypher by the name of Xoland, which circumstances make it probable he did correspond with Wogan.

There is one farther particular relating to this cypher, which the committee think it proper to remark to the House, which is, that Plunkett, while he was in custody, desired a certain book might be brought to him from his lodgings, but the messenger's wife, searching the book before she delivered it, has deposed upon oath, that she found in it this letter from N. Wogan. And as the committee are informed, that most of his other cyphers and papers were found hid in the leaves of his books, they think it probable, that he singled out this book, in hopes of recovering and destroying the cypher that serves to explain his letters; the contents of which the committee will now proceed to lay before the House, and to avoid repetition of names, wherever they can, will make use of the real names found in his cypher, instead of the fictitious ones, by which they are expressed in his letters annexed to this Report.

Among his papers was found the foul draught of a letter, dated March the 22nd, 1721, and directed to Mr. Jackson, which in his own cypher is explained the Pretender. In this foul draught (which is sworn to be his hand-writing) are the following passages:

"I look, Sir, on your law-suit to be in such a forwardness, that a speedy and happy replication must inevitably ensue; the Waggs, as well as the Tanners" (which names he explained to Layer to denote the Whigs and Tories) "seem convinced that nothing less can redress their ruin: nay, the latter is apprehensive the former will compliment you with it on your own terms, in order to engross your favour for the future. The precepts my friend and I gave in lately, have contributed much to this emulation: we have more to give in; and if they improve them as they have the former, you will have a good game on't." The words replication and precepts are not found in his cypher, but the sense of the former may easily be guessed at.

He afterwards adds; "The gentleman I mentioned to you formerly, is come out of the country, with instructions to wait on you, and tender you his service; he offers to bear my expences if I go with him: as I take it that my going will be of more use than my staying now, I believe I shall accept of his offer." In another foul draught of the same letter, he says, (as has been before observed) "There is one sets out from Norfolk in a few days, to let you know the Tanners will stand by you on occasion, and offers to bear my expences; so that I shall wait on you, and have the satisfaction to tell you by word of mouth what will be acceptable. He carries the List with him." And in heads or minutes of the same letter, he says, "Wag and Tanner will equally concur. —My friend will wait on you to tender their service—Our message will pin the basket— You may have daily messages of this kind; you will be courted, it is the English way—"

The committee think it unnecessary to repeat here, how inconsistent these accounts of Layer's journey, are with those given by Layer

himself: and how strongly they contradict Plunkett's bold asseveration, that he knew nothing of Layer's intending to go to Rome before they set out.

Another foul draught of a letter was found among Plunkett's papers, and is sworn to be his hand-writing; the matter of which appears to your committee very remarkable. It is not dated nor directed, but appears plainly to have been writ the beginning of the last year, and in it are the following passages, "I had four of count Bothmar's letters since my last to you; Mr. Burford had them all; his clerk gave me to understand they were sent to Mr. Jos.—This made me not to trouble you. This only to wish you a happy new year. I hope it will bring the law-suit to bear, afore it will end; if they would have courage and integrity, they may walk k. George out afore Lady-day next—" (and in another part he says, afore May come) "He is weary of them, and thinks no more of staying among them." It appears from this paper, that Plunkett had conveyed copies of some letters of count Bothmar's to lord Orrery; that lord Orrery's clerk had given him to understand, those letters were sent to the Pretender (from whence it may be concluded, that either lord Orrery or his clerk had a direct correspondence with the Pretender,) and that Plunkett was privy to some design for walking k. George out (as he calls it,) which design required courage and integrity, and was to have been executed either before Lady-day, which was during the elections, or by the beginning of May, which was the second period fixed (as has been observed) for beginning the insurrection. Simon Swortfegger, secretary to lord Orrery, owned upon his examination before the lords, that he was acquainted with Plunkett, and had been in company with him and Layer at Mr. Aaron Thompson's chambers. And Plunkett owned to the committee his being acquainted with Swortfegger, and his having been in company with him and Layer, at Layer's house; but denied his knowing any thing of the foul draughts of the letters abovementioned.

Plunkett, in his letter to Digby of the 21st of May, says, "I hope in a little time Mr. Joseph" (which Layer owned to be the Pretender) "will be the ministry's only refuge. Burford" (whom Layer declared likewise to be Orrery) "and his club seemed to think so: they will have a finger in the pie if they can; I know they can come in for a good share in it, if they can have a little concert and regulation; there are those that will undertake to do the job in twelve hours time. A little time will shew whether they will give fitting encouragement; if two or three are taken off, no matter how, king George will go off by hook or by crook, and of course the Lowty will be for Joseph: this has been communicated to your friends."

What is meant by the Lowty, does not appear by his cypher; but by the sense, and the alphabetical order of the cypher, it is not improbable but it may mean the ministry.

Whether the job that was ready to be undertaken on fitting encouragement, and to be performed in twelve hours time, relates to the rash enterprize for surprising the city of London, which has been already taken notice of, or to the wicked and execrable design for seizing and destroying his majesty's sacred person, of which mention is expressly made in two subsequent letters of Plunkett's, is left to the consideration of the House.

But the committee, from comparing the memorandum at the end of the paper of resolutions, in the following characters Dis. C. W. M. with the two or three that are mentioned in this letter to be taken off, and likewise with Wilson's intimation to Layer, that if lord Cadogan were but shot, the soldiers would declare for Ormond; and also with Layer's negociation about seizing lord Cadogan, and with the paragraph in his Scheme for seizing some great persons at their houses, see reason to believe, that by the first of those characters is meant, Dispatch lord Cadogan; and by the others, two other officers of distinction.

In the same letter of the 21st of May, Plunkett takes notice, "That Johnson, an acquaintance, was taken up the day before, but had burnt his papers, and seemed to be easy in the matter; and adds, I believe they will get nothing by him."

Plunkett being asked by the committee, whether he was acquainted with George Kelly, alias Johnson, said he knew him by sight and coffee-house acquaintance only; that he did not remember his having ever received a letter from him; and Kelly gave the same account in relation to Plunkett: yet a letter from Kelly was found among Plunkett's papers; and John Malone, who waited on Kelly at his lodgings, has named Plunkett in his deposition, as one who often visited Kelly there. And the committee are satisfied, that they were privy to each other's treasonable correspondence, by some passages in the letters to and from Kelly, in which mention is made of Plunkett by the name of Rogers, as will be shewn in its proper place. Plunkett concludes his letter of the 21st of May with these words: "The motive of my journey is over at present, my pocket feels it, the man must be fed with money now and then; the labouring oar will, I believe, be laid on me."

As he denied the writing these letters, the committee could not draw from him any explication of this paragraph; but comparing it with the other part of his letter, where it is said, that a little time will shew whether Burford (lord Orrery) and the club, would give fitting encouragement for undertaking the job; they think it appears probable, that some part in this job is the labouring oar referred to, for which he expected to be fed with money.

His next letter to Digby is of the 31st of May, in which he says, "He finds the regent had a hand in keeping k. George from going abroad, so that the ministry will carry on their game safely and leisurely without any oppo-

sition whatever from the club, or any of the Pretender's friends." He adds, "Let them be ever so sanguine, they can do nothing as long as the regent stands by the ministry: But should Ormond come, with half a dozen regiments only, he would carry his point, and make k. George run for it." This passage confirms what hath been set forth above, that the late duke of Ormond's coming over made a part of the original Scheme, and agrees with the accounts received from Spain, of Irish soldiers provided there for the Pretender's service.

Plunkett then adds, "If Burford (lord Orrery) and the club have a mind to have k. George delivered up to them, he shall; there are those that will undertake it, and offer to do whatever required." And in his letter of the 4th of July, he says, "—— I can assure you, despair has made some to take a resolution to lay violent hands on k. George; but there is a stop put to them at present: It is not the Pretender's interest; but you can't do so always; an ill precedent is dangerous."

The black and villainous design expressed by these two paragraphs, needs no explication from your committee, who are sensible the House cannot have heard them read without the utmost horror and indignation.

He speaks of himself in these letters as knowing the men, who had taken a resolution to lay violent hands on the sacred person of his majesty; and was himself so far engaged in this execrable design, as to say in one of his letters, If the club desire it, his majesty shall be delivered up into their hands: And in another letter dissuades it, not out of any conscience or remorse for the crime, but merely for fear the same barbarity should be retaliated on the Pretender: Yet this man still continues so hardened and obstinate, as to renew his guilt by refusing to make the least discovery of his accomplices, or to give this only reparation and atonement he is capable of, to a country which he has been labouring to involve in the greatest calamities.

He afterwards says, "That though there should be a rising in most parts, if the mob is beat in one place, the rest will go home and be quiet for seven years more."

His next letter is of the 21st of June: In this he says, "That Burford and the club think themselves slighted by the regent and ministry of France; and conceive, that the regent joins with king George to be revenged on them. That he may have room to repent it early or late; for should the parliament be broke, and a new one called, he might find himself more embarrassed than he is aware of." He adds. "If the regent stands neuter, they will soon bring the law-suit to bear; so far I am satisfied of it, that four or five hundred men, and as many arms, with 1,500*l.* will complete the matters in a little time, and give a good account of king George and the ministry. The army want only an opportunity to do their duty. This scheme, if duly and discreetly managed, will give them an opportunity to do it. Were we sure the regent would not interpose, we would take it in hand forthwith."

The committee make no doubt but the House has prevented them, in observing how exactly this letter agrees with the accounts sent some time before from France; that the conspirators reckoned on great part of the king's own forces: and only desired the regent that he would keep himself neuter between the Pretender and his majesty. And this letter appears to have been writ at the time when Layer, Wilson, Murphey and Plunkett were labouring to corrupt the officers and soldiers of the army.

Plunkett adds in the same letter, "If the regent and court of Spain will but ply k. George with large demands, and bring the czar down to Hanover, the Pretender will have a 'carte blanche' from the ministry and king George, as also from all the rest of his friends and foes: This I take to be the best and safest way both for the Pretender and his well-wishers."

This expression of the Pretender's getting a 'carte blanche' from the king and ministry, is repeated several times in Plunkett's letters; and however extravagant and ill founded such suggestions were, yet the committee cannot but observe, that his representations appear to have met with such a spirit of credulity and delusion in the Pretender and his agents, that not long after he was vain enough to entertain hopes of capitulating with his majesty for the crown by that traitorous and insolent declaration, against which both Houses have so lately expressed their just resentment and abhorrence.

Plunkett's next letters are of the 4th and 5th of July, 1722; in which he has the vanity to tell Dillon, "That he had been desired, by some leading members of the then parliament, to acquaint the regent's agent here, that it was now in the power of the regent and Spain, to send away king George, and to send home Mr. Jos. with a 'bonne grace,' and much to their advantage; that it was only to insist on the stipulation king George had made with them, and they would have a fair pretence to do it."

It appears by other passages, that this supposed stipulation relates to the cession of Gibraltar.

He afterwards gives an account, "That he did, both on the 4th and 5th of July, wait on the regent's agent with this message; and says, That as that agent was acquainted with some of the members of parliament who employed him, he gave some attention to him: But the objections which the regent's agent made, appear to have been, that the Pretender had not the name of a man of great parts or resolution: That he had hitherto no great opinion of Burford and the club: and that such a procedure on the part of the regent, would be a violation of the 'bonne foy.' To which last Plunkett replied, that it would be no breach of their 'bonne foy' to be grateful to those who were their deliverers formerly." However, Plunkett says, "He convinced the agent, that it was

now in the regent's power to make the ministry and king George give the Pretender a 'carte blanche;' and by so doing, to make the emperor vomit up what he has now in Flanders, without striking a stroke. That the common people, the country party, and all the English gentlemen might be brought to join with the regent in proper measures to do it; or, that if the regent would but stand neuter, they would soon bring the Pretender's law-suit to bear independent on any whatever." He adds, "That he is satisfied the agent would write these sentiments to his court; and that it is Dillon's business to let the regent see he has the same sentiments from other people here."

Plunkett being examined by the committee, in relation to this letter, owned, he had frequent access to one of the French ministers on private affairs: and that Layer knowing him to be acquainted with him, asked him, whether he could find out, by the help of that minister, whether the regent might not be brought into Tory measures? And Stephen Lynch has deposed, that Layer told him, application had been made, either by himself, or some other person, to one of the French agents here to the effect mentioned in Plunkett's letter. However, Plunkett denied his having ever spoke to that minister in relation to state-affairs, or his having writ any such account to France.

The committee, from comparing this relation of these two conversations with what he says in other letters, of bringing the czar down to Hanover, in order to oblige his majesty to withdraw from England, observe, that the conspirators were so intent on compassing their wicked designs by any means, that having failed in their applications for foreign assistance, they were now labouring to make France and Spain insist on the restitution of Gibraltar, to throw Flanders into the hands of France, and to bring the czar into Germany, in hopes to involve all Europe in confusion, and thereby to pave the way for bringing in the Pretender.

In the same letters he tells Dillon, "Now is the time for the regent and ministry of France to serve you: if they do not, I can assure them, they may have room to repent it: for the Pretender's friends will find means to get into the saddle in spite of the ministry and k. George."

He adds, "That the army will not stand by the king and ministry, against the great bent of the English gentlemen, the common people, and the country party; who are so incensed against the court, that the least accident would surely overturn what they have been doing these seven years past."

He then says, "That his fellow-traveller is, and has been very active since his coming from his travels, and is more serviceable than those who move in a higher sphere: that he is spurring on the club daily, and has made many of them more active in the law-suit than they otherwise would have been. That his wife parted the day before for Paris; and that he gave her a letter for Dillon; his fellow-traveller thinking himself entitled to it, or any other civilities Dillon could shew her, during her stay there." He adds, "Your friends continue their preparation, and resolve to hold themselves in readiness on occasion."

The committee take notice, that these letters were writ just about the time that Layer went down to Norfolk. And they think the sanguine manner in which Plunkett writes, is in part accounted for by what lord North and Grey told Layer, that the encampment had spoiled the project: but we shall have them again. And by his lordships saying, be you quiet, something will be done: if there be a rising, you shall not want men, or money, or arms. And that these letters and passages make it highly probable, that the substance of Layer's scheme had not been only seen, but approved of.

Notwithstanding the account which Plunkett gives in this and other letters, of Layer's proceedings, yet Layer denied that he had ever opened himself to Plunkett, in relation to the Pretender's affairs, after their return from Rome; and Plunkett affirmed, that he only knew Layer by coffee-house acquaintance, and never conversed with him but in the streets publicly.

Plunkett's next letter is of the 23rd of July, the original of which being stopped, and being sworn to be his own hand-writing, the committee think it proper to lay the whole before the House, with the explanation of the fictitious names taken out of the cypher, which is sworn to be his own hand also.

A Monsieur Digby à Paris.

Under a blank cover to Waters.

July 23, 1722.

"By the time this comes to hand, king George's agent will arrive there: I am glad on't, because I hope all the negociations and proceedings of the ministry and king George will be laid before the parliament, which will be a means to send him to Hanover. Though he thinks to bring the country party to approve of whatever he will propose to the parliament, he will hardly even bring the court party to do it. He thinks to disculpe himself at the expence of the dead. This I told some of the parliament-men; they say 'twont do for love or money. Certain persons are forming projects that will distress the court of Spain, in case of war between Spain and the emperor. Count Bothmar comes into it by king George's connivance; 'tis now in embrio: when it comes to perfection, I shall be master on't. I gave a hint on't to the regent's agent; he was not a little surprized at it. They must not linger much longer; if they do, the emperor and king George will find means to distress the court of Spain and the ministry in France; they must hasten the peace to prevent it.

"My companion, who has been in the country this three weeks past, came to town yesterday: he seems to be sure of his game, viz. that Mr. Joseph's friends will run down the ministry and king George in a little time, and

bring the law-suit to bear on their own bottom, and independent of the regent, or any body else. I am resolved to know nothing of their proceedings; I am for having every thing laid before the parliament first, and then every body will see we want the Pretender more than he wants us. Both friend and foe will join in any enterprize that will be made in his favour: neither will they ever dare upbraid him, if, on any occasion, he should look asquint on 'em hereafter. I hinted often, the only way to spirit them up, was to convince them the law-suit would be brought to bear without them; and that by the regent and king George. The construction they put upon this was, that the former was subtle enough to make use of the folly of the latter, to play the game to his own advantage at our cost, and that he will govern Mr. Joseph when here, as he does now king George. This, or some such imagination, gave them an uncommon resolution; and I believe they will struggle hard for a start in the race of honour. 'Tis in the regent's power to make king George, the ministry, and the club, to give Mr. Joseph a carte blanche: 'Tis incumbent on you to convince him of it. I am sure his agent here is already; for I gave him this morning demonstrative proof, that king George designs to support the emperor against the French king and his coss. and that without being seen in it.

"I would be glad to know how the duke of Berwick does, and if he continues there this summer. I have little to do in town, so I design to go to the country for three weeks. The town is dull and empty.

"We hear the Czar is in motion, I wish it may be towards Hanover, for king George would soon move from his country seat here.

"I believe Mr. Joseph will laugh, when he'll hear of the stratagem I made use of to bring his friends to so good a temper of duty. I hope they will keep to it, which is the wish of, Sir, your humble, obedient servant,

"Jo. Rogers."

In his letter of the 16th of August, he says, "The Pretender's law-business continues in the same plight. My companion goes on, as he thinks, very successfully, and is confident he will bring the business to bear in a little time."

This letter was writ nine days before Layer went down to lord North and Grey's with Lynch.

Plunkett says in the same letter, "That the Pretender must promise the regent and ministry of France fair, and that he will be a fast friend, when in his power, and must seem to rely more on them, than any here; that this is the only game he has to play at this time."

In his next letter of the 29d of August, he says, "That his friend came out of the country a few days ago, and told him that his clients seem now to despair of bringing the law-business to bear this next term, except the regent were made a party; that he, Plunkett, told him, in case the regent were applied to in a proper manner, he might be prevailed on to come into proper measures, at least indirectly, and that without breach of the 'bonne foy' he owes king George or the ministry." He adds, "That they (his friend's clients) are for any thing but under their hands; and that if they should apply to Dillon, or the regent (as his companion had told him they soon would), they might safely offer at least to come into their measures, to stop their mouths hereafter; and he thinks, with submission, 'tis pity to hinder them from plunging themselves, as they did before." He adds, "That it is in the power of the regent and ministry of France, to make the ensuing parliament give the Pretender his own terms, and that as the French king is soon to be of age, he may do every thing with a good grace and 'bonne foy;' and settle the Pretender so, that it will always be in his power to serve him, and the court of Spain."

Plunkett, who assumes to himself so considerable a part in these transactions, being asked by the committee to give some account of his life and education said, that he was born at Dublin, and bred up when a boy at the Jesuits college at Vienna; that he is a Roman catholic, but not in any orders. And though he endeavoured (as has been observed above) by his dress, appearance, and behaviour, to represent himself to the committee as very inconsiderable, and no ways equal to the part he was taxed with, yet a great number of letters from persons of the first quality abroad were found among his papers, in which the committee observe he is treated with great intimacy and confidence. And in a letter from the lady Middleton, of an old date, mention is made of her being to introduce him to the late king James's queen in France; to whom, as he owned to the committee, he had been introduced. And that the trust and confidence reposed in him still subsists undiminished, appears to the committee, not only by his own confessing, that he did walk and converse with the Pretender publicly in his garden at Rome, but from Layer's account, that he had two private conferences with the Pretender; and above all, from the letter under the Pretender's own hand, which he shewed to Layer at Rome, and which has been communicated to the committee, as before-mentioned, in which the Pretender treats him with such distinction, as to charge him not to mention any thing of business to any body, till he himself had seen him alone; than which, the committee think, a stronger and a more convincing proof of trust could not well have been given. It appears also by foul draughts of letters taken among his papers, that he writ directly to the Pretender himself.

Mention being made in Plunkett's letters of Johnson alias George Kelly, and some extracts of letters to and from the said Kelly having been referred to the committee among Layer's and Plunkett's papers; by which it appeared to them, that Kelly's treasonable correspondence had a connection with the others, and particularly, that he was privy to some

of Plunkett's transactions; your committee thought that their having a general view of all the papers relating to the conspiracy, might help to illustrate and explain the several parts of it, in the same manner as Layer's and Plunkett's papers mutually confirm and give light to each other.

For this reason they moved the House to have those papers laid before them, and to empower them to take such farther examinations, as might be necessary to lead them on in tracing out the source of the treasons enquired into.

Having accordingly perused those papers, and examined some of the persons principally concerned in them, they now proceed to lay before you the result of that enquiry.

It appears to them, that George Kelly, clerk, has been of late years constantly employed in carrying on several treasonable correspondences and negociations between the Pretender's agents abroad, and persons of great distinction at home, tending to the bringing in the Pretender with an armed force, and to the overturning the present happy establishment in church and state.

And here your committee find themselves obliged to mention the lord bishop of Rochester, as principally aiding, directing and employing the said Kelly, in the prosecution of his treasonable designs.

As Kelly's correspondences seem to derive their weight and significancy chiefly from his being employed by the bishop of Rochester, your committee will first lay before you the several reasons that induce them to believe he was so employed, and the part which it appears to them the bishop has had in this conspiracy.

It appears to your committee, from several informations of Philip Neynoe, clerk, formerly mentioned, "That George Kelly, alias Johnson, frequently told him, that the bishop of Rochester held correspondences with the Pretender and his agents: that he, Kelly, was employed by the bishop in writing for him, and carrying on the said correspondences; that Kelly told him, the Pretender relied more on advices from the bishop, than from any other person; that he had several times left Kelly at the bishop's door, when Kelly went into the bishop's house, and staid there an hour or two, and upon coming back to him, Kelly made apologies for staying so long, and told him, he had been writing the bishop's letters, which he always apprehended to be the foreign correspondence of the bishop with the Pretender's agents; and that Kelly told him, the bishop never suffered him to take a bit of paper of the bishop's hand-writing out of the room.

"That he knows letters were directed to Kelly by the name of Moses Hancock and Hatfield; and that he has seen at Burton's coffee-house a letter to Kelly from Howell, whom he takes to be agent or secretary to Dillon, and employed by Dillon in the same manner as Kelly was by the bishop of Rochester) in which letter there were compliments to the bishop, by the name of Naunton, which name Kelly explained to him to mean the bishop. That Kelly has told him, the bishop of Rochester went sometimes by the name of Jones; that he had likewise heard the bishop went sometimes by the name of Illington, which last he was told by Mr. Carter, to the best of his memory. That in the letter which Kelly shewed him at Burton's coffee-house, mention was made of Mansfield, which Kelly explained to him, to mean the late duke of Ormond. That he has seen several cyphers in Kelly's hands, one in figures, another of fictitious names, in which last, 'carpenters' stood for Scotch soldiers; 'sadlers' and 'sophisters,' for Irish soldiers and the like; that he has seen Kelly make use of these cyphers, and that Kelly with great freedom owned, that these cyphers were carrying on the correspondence with the Pretender's agents. That he had likewise seen cyphers in Carter's hands, who was also employed in writing dispatches to the Pretender's agents abroad. That he, Neynoe, had been employed to draw up three several memorials to the regent of France, to solicit him to send forces to the assistance of the conspirators, the last of which was in December, 1721, and contained a demand of 5,000 men, to be sent to invade these kingdoms; that the heads of these memorials were given him by Kelly, and one who went by the name of Watson, whom he took to be the late earl marshal.

"That in March last, Kelly brought him the heads of a letter, to be drawn up with a design of its being intercepted by the government, in order to amuse them into a false security. That he drew up the said letter in a paper, writ column-ways; that this paper was brought back to him, corrected by the bishop of Rochester, as he believed."

Your committee are informed this letter was not intercepted, but that a copy of it was sent about that time to one of the secretaries of state, from an unknown hand.

Neynoe farther declared, "That the bishop of Rochester, lord Orrery, lord North, and sir Harry Goring, were the principal leaders and directors of the conspiracy, which was first to have been executed in the spring of the year 1722, by seizing the Tower, upon which the late duke of Ormond was to have landed in the river; that upon the discovery of the plot, and the king's not going abroad, it was put off for some time; but that it was afterwards resumed to be attempted in the west." Neynoe farther added, "That Kelly assured him, the bishop got notice of his being to be taken up some days before it happened; and that this notice was given the bishop by one of the lords of the council." But he afterwards confessed, (as your committee are informed) that in this, and other examinations, he had endeavoured all he could, to create diffidence and suspicions among his majesty's servants.

These informations of Neynoe are contained,

great part of them, in a paper writ with his own hand, and delivered by him to a committee of lords of the council. The other part is extracted out of papers, which he dictated at his several examinations; which papers were read to him paragraph by paragraph, and agreed to by him before the lords.

That Neynoe was intimately acquainted with Kelly, visited him often, and sometimes lay at his lodgings, and thereby had a better opportunity of being informed by him, appears from the depositions of Stephenson and his wife, Margaret Kilburn, landlady to Kelly, and John Malone, servant to Mrs. Barnes, who waited on Kelly at his lodgings.

That the bishop of Rochester was acquainted with Kelly, invited him to dine with him, sent his servants to enquire after his health, and wrote to him, appears from Stevenson's and Kilburn's depositions, as also in part from Mrs. Lovett's.

But what gives the greatest weight to the several particulars contained in Neynoe's information, is, that they are corroborated and supported in every material circumstance, by several concurrent proofs, as will appear from the sequel of this Report.

Pancier has deposed upon oath, that Skeene, among other particulars of the conspiracy, told him, that the bishop of Rochester, in conjunction with the lord North and Grey, had the principal direction of the conspiracy; and that 200,000*l.* had been raised; and put into the management of the bishop of Rochester, which was called the military chest, and was to be kept together till the project was put in execution.

Your committee are informed, that when the bishop was taken into custody, vast numbers of letters and papers were found in his house, bearing date before the year 1712; but from that time downwards, few of any consequence, except these which follow.

One was from the duchess of Ormond, dated January 14, 1721, in which are these words:

"I resolved to send what I received: for though it had not happened to belong to the person I addressed it to, I was sure it could not be put into better hands."

This passage makes it highly probable, that the bishop used to receive letters from abroad directed by fictitious names; which is still further confirmed by the following circumstances:

In the cypher which Layer owned he received from sir William Ellis, the bishop of Rochester is designed by the name of Justus.

Neynoe declared, that in the letter which Kelly shewed him from Dillon's secretary, there were compliments to the bishop of Rochester, by the name of Naunton.

Among the bishop's letters was found one directed to Mr. Dubois, not signed with any name, nor dated from any place. It was in the following words:

"Sir; Forgive my silence. You easily conceive the difficulties I am under in that regard. I write this only to assure you of my sincerest and unalterable respect; and refer you to the worthy bearer for news, and for every thing, which otherwise I should have found some way or other of writing to you myself. I have heard nothing from you since the letter I had about two months ago by Mr. Johnson, to which I immediately in his hand returned my answer. A rumour has reached me of your having written hither since; but I can find nobody that owns he has seen your letters. I am always, Sir, your truly obedient, and most humble servant."

Dec. 16.

Your committee observe, that Johnson is the name by which Kelly constantly went, as appears to them from several affidavits: and that he was at Paris the 16th of December, 1721, N. S. and set out in two or three days after for England, as appears from the pocket-book taken upon him: and the letter to Dubois seems to intimate such a correspondence as made it unsafe to write openly, and without disguise.

Among the bishop's papers was found another letter, dated Rouen, Jan. 15th, 1722, without any name; and the superscription torn off. Which letter is mentioned to be sent by an honest gentleman; and the writer of it desires to know how he may direct; and desires to be directed to by the name of Wishart, at Mr. Arbuthnot's at Rouen, which is probably a fictitious direction, no name being subscribed to the letter. He likewise mentions a former letter sent under cover to their common friend sir Red. Who sir Red. is, does not appear to your committee; but they find one sir Red. Everard inserted in Plunkett's cypher, and designed by the fictitious name of Fly.

Among the bishop's papers were likewise found two letters from captain Charles Halstead of Greenwich; the person who, as has been mentioned above, was sent to Bilboa, to transport the late duke of Ormond to England.

Some letters having been intercepted, which there is good reason to believe were from the bishop of Rochester; and one of these letters being signed T. Jones, and another T. Illington, your committee will now lay before the House the evidence they have found of the bishop's being designed by those two names, collected from circumstances, which being in themselves seemingly minute, and of little consequence, were for this reason more frankly confessed by those who were obstinate in concealing stronger proofs; and yet at the same time lead directly to the discovery of the person meant by those names.

Mrs. Barnes being examined before a committee of lords of the council, obstinately refused to make the least discovery relating to George Kelly; but when she came to be asked what she knew about a dog sent over to Kelly from France; not suspecting this could lead to any discovery, she readily owned, tha

a spotted little dog, called Harlequin, which was brought from France, and had a leg broken, was left with her by Mr. Kelly to be cured: that the said dog was not for her, but for the bishop of Rochester; and that Kelly promised to get the dog of the bishop of Rochester for her, in case it did not recover of its lameness. This declaration she made and signed in the presence of the committee of council: and Kelly himself made no difficulty to own the receiving such a dog from France.

But it appears to your committee, by letters intercepted between Kelly and his correspondents in France (the proofs of which will be set forth in the sequel of this Report), that a dog so named and hurt, was sent over to Kelly from France, to be delivered as a present to the person denoted by the names of Jones and Illington.

For in his letter to Howell (who is explained in Plunkett's cypher to mean Glasgow, and has been observed above to be Dillon's secretary), he mentions his having received the present, and the accident of a leg being broken in the voyage; and adds, "I will inform Mr. Jones soon of it, to whom I know any thing from that quarter will be very acceptable." In the same paragraph he says, "Mrs. Jones died last week; and when the days of mourning are over, he will, I hope, be fit for business." This letter was writ on Monday the 30th of April; and the bishop's lady died the week before, on Thursday the 26th of April.

Kelly in his letter to Musgrave, (which name will be hereafter shewn to signify the late lord Marr) dated the 7th of May, says, "Mrs. Illington is in great tribulation for poor Harlequin, who is in a bad way, having slipped his leg again, before it was thoroughly well: however his obligations to the lady are as great as if he had come safe, which he desires you to let her know."

The words 'he' and 'his' being relative to Mrs. Illington, shew it is a man that is spoken of: the bishop's lady was dead at the time this letter was writ. And this disguise of putting Mrs. for Mr. is frequently made use of in the intercepted letters, and is confirmed by a parallel instance immediately following.

May the 9th, Dillon's secretary writes to Kelly, and says, "Mrs. Chivers (which will be shewn to be general Dillon) prays you will condole in his name on the death of Mrs. Illington."

It appears by these passages, that the dog was for Mr. Jones, alias Illington: and upon Kelly's writing word that Mrs. Jones was dead, the correspondents condole on the death of Mrs. Illington; which shews Jones and Illington to be the same, and both to be made use of to denote the bishop.

On the 11th of May, Motfield (who is the same with Musgrave, that is, the late lord Marr) sends a letter to Mr. Illington, enclosed under cover to Kelly; in which, after acknowledging the receipt of Illington's letter of the 20th of April, he adds, "I did not expect so soon after to have heard of a loss you have had since; for which I condole with you, and nothing which concerns you so near can fail touching me, as in friendship it ought. It is, though becoming us, as it is our duty, to submit with resignation to what the just and great God thinks fit to order for us in this vain and transitory world; but you know such things so much better than I, that I will not trouble you with saying any more upon it."

This last paragraph seems to point out the character and function of the person to whom the letter was writ.

Motfield adds, "I would fain hope that your own distemper will soon give you ease;" which agrees with the circumstance of the bishop's being ill of the gout at the time of his wife's death.

This particularity, as also several others, which will be taken notice of, as to the bishop's being in town or in the country, at the respective times mentioned in the intercepted letters, have been carefully enquired into; and it appears by a paper annexed to the Report, that these several circumstances do exactly agree with what is mentioned in the letters.

Kelly writing to Musgrave (the late lord Marr), the 7th of May, says, "Mrs. Jones is come to town:" the same day writing to Chivers (Dillon) he says "Mr. Illington is now in town;" which again confirms Jones and Illington to be the same, and agrees with the inquiry made at that time.

On the 10th of May Kelly writes to Dillon's secretary, "Illington is gone into the country, and sent me word he would be in town on Tuesday night, when he has desired to see me at a particular hour, by which I conclude it may be about business." And on Monday the 14th of May, (the day before, it is said, Illington was come to town) writing to the same person, he says, "Jones is still in the country, but has sent me word he will be in town tomorrow."

These several circumstances, joined to Neynoe's declaration, that Kelly had told him, the bishop went sometimes by the name of Jones, and that Carter had told him, the bishop went by the name of Illington, shew, that wherever Jones and Illington are named in Kelly's correspondence, the bishop of Rochester is to be understood by those names.

Your committee therefore will next proceed to lay before you the part which Jones or Illington appear to have borne in the treasonable correspondence.

It appears by Kelly's pocket-book, that Kelly set out for Paris on the 22d of February, 1721-2, and returned to London about the 8th of April following. It appears by Mrs. Lovett's and John Malone's deposition, that he came to Mrs. Barnes's on Wednesday the 11th of April, at eight in the morning, extremely fatigued, and went immediately to bed. Mrs. Lovett has deposed upon oath. "That Mrs. Barnes told her he was then just arrived from France, and

brought over letters with him: that several of the disaffected had been at her house to enquire after him before his arrival, and expressed the utmost concern for fear he should be taken." And Neynoe declared, "That he saw a great bundle of letters which Kelly brought over from France." Mrs. Barnes farther told Mrs. Lovett, "That the day after, (viz. Thursday the 12th of April) the bishop of Rochester sent his own coach to fetch him, and that Kelly was absent in the country till Saturday the 14th." Two depositions, annexed to this Report, shew, that the bishop of Rochester came to town on Wednesday the 11th, and went to Bromley on Thursday the 12th of April.

It appears by a letter writ to Kelly from France by the late lord Marr, and intercepted, that on Monday the 16th of April (which was the first post-day to France, after the bishop had sent for Kelly), Kelly had writ to Marr an account of his negociations with Illington, and of Illington's willingness to be reconciled to one designed by the name of Hacket. Who Hacket is does not appear to your committee, but he is described in several of the letters as a person in ill health retired in the country, and one in whom the Pretender's agents at Paris place their greatest hopes and confidence next to Illington. This reconciliation with Hacket, Illington was desirous might be kept secret for some time, that it might not be known they acted in concert.

It appears by another letter to Kelly from Dillon's secretary at Paris, that Illington had writ a mysterious letter thither, and that Kelly had writ a subsequent one in explanation of it, which had been shewn to Dillon.

The first letter that was intercepted from Kelly himself, was dated the 22d of April, signed James Johnson, (the name he always went by, and often signed by) and directed to Gordon junior, banker at Boulogne, at whose house, it is probable, he had been entertained in his last return from Paris; which Gordon is mentioned in a letter from Mr. Craufurd, as being formerly the Pretender's banker, and as one employed in hiring a vessel to transport some of the chiefs of the conspiracy to England. In this letter to Gordon, Kelly recommends to his care a packet enclosed.

This packet was directed to Mr. Chivers (which will be proved to be Dillon), and consisted of three letters, one to Chivers himself, signed J. Jones; another to Musgrave (which will be proved to be Marr) signed T. Illington, a third to Mr. Jackson (which will be proved to be the Pretender) signed 1378; which number is found by the decypherers, to denote the proper name of a person beginning with the letter R, in the cypher made use of in these three letters, the order of which, as your committee is informed, is alphabetical. All the three letters were dated the 20th of April, and appear by the matter to be from the same person, which prove 1378 to be the same with Jones and Illington. The letters to Musgrave and Jackson were enclosed in that to Chivers.

The person who dictated these letters speaks of himself as being in ill health, in great pain, under some sad and melancholy circumstances, which made him uncapable of doing any thing regularly at that time, but which he expected would soon blow over; which agrees with the bishop's circumstances at that time, whose wife was extremely ill, and died six days after; and he himself, as has been observed before, was at that time afflicted with the gout.

The letter to Chivers is a great part of it out of cypher, and with the decyphering is in the following words:

"*20th of April*, 1722.

"Sir; I ought to acknowledge in form the several papers I have successively received from you, if I were capable at present of doing any thing regularly; but indeed I am not, as Hatfield well knows, and why I am not. Some time must pass before I am any way capable of business; in the mean time you are in the right to press the gentlemen concerned by all manner of ways you can think of, to furnish, what by being hitherto not supplied, has rendered the thing impracticable. They were desirous of having that matter entirely in their own management, and I not unwilling that they should have it, being always diffident of success on my part upon interpositions of that kind; and therefore it gave me no concern to be so freely excused from any share (as I was for a great while) in that trouble. At last, indeed, when the point was found upon trial to be more difficult than they expected, I was pressed to undertake the matter; but so late that I did not think it reasonable for me then to interpose, nor can I yet undertake any thing of that kind, it being what (since some former mismanagement wherein I was deeply concerned) I have constantly declined, hoping that I might not be altogether unuseful to the service, if I went on to promote it in my own, that is, in another way. I still hope so, and that a little time (which must be employed in doing nothing but soliciting supplies) will give me room for entering into measures that may be somewhat more significant than those formerly taken; this I shall endeavour, being at present perfectly tired by the distracting measures which have been taken from several quarters, by persons noways equal to the work, and at the same time not agreeing among themselves. This is all I can say at present, but that I am with the same entire respect and fidelity I ever was, Sir, your most, &c.

"T. Jones."

"I have communicated the copies of Mr. Mansfield's and Jacob's letters, which besides the G . . . . . : . . . . . , (whereof they had a copy) were the only ones of those transmitted, that I was directed, or indeed thought proper so to do. Though I have for some time thought, that nothing of importance should be trusted to the post, and am resolved myself not to send that way; yet the death of lord Sunderland makes such a caution more indispensa-

bly necessary; for you may depend upon it, that those in power here will now enter into measures of more severity and strictness, and employ all their diligence, as well as power, on such occasions."

That Chivers, to whom this letter was directed, means general Dillon, is evident from the following circumstances.

On the 13th of May, Cane writing to Kelly, owns the receipt of these letters from the Bishop; but over against the name of Cane in Plunkett's cypher, is writ Dillon, and Kelly answering this very letter of Cane's directed to Chivers. Besides which, it appears from innumerable passages, that Cane and Chivers mean the same with Digby and Dixwell, which have been shewn at large to denote general Dillon.

The Bishop's letter to Musgrave (who will be proved to be the late lord Marr), is as follows:

"To Mr. Musgrave.

"*April the 20th*, 1722.

"Sir; I received from Mr. Hatfield (after a long intermission of such favours) a letter which was very welcome to me, I have also considered carefully what he had to offer to me in particular, and entirely agree with what is proposed; but my present sad circumstances (of which he has already informed you) will not suffer me to be active soon, or even set forward the affairs entrusted with me in so speedy a manner as I could wish. The best is, that as I cannot act openly, so neither is there, I think, any immediate need of it, some time being requisite towards ripening matters, in order to fix the C.....:.....'d, which, if hastily begun, may be attended with suspicions and other inconveniencies; but you may depend upon it, that the .....:.....s committed to my care, shall be forwarded in due time to the persons concerned, as also all such other :.....s as I judge, and at the time I judge, they will best promote the service. What is to be wished for, is, that the person whom I am to act with would come to town, and his doing so may be facilitated better from your side, than by any thing that can be done here; by that time he comes, I hope I shall be able to take my part with him. I add no more now, being very unfit to say even thus much, but that I am, with entire respect and confidence, Sir, &c. T. ILLINGTON."

That Musgrave (to whom this letter was directed) means Marr, is thus proved.

Dillon's secretary writes to Kelly, that Mr. Lane (over against which name in Plunkett's cypher is writ lord Marr) was much pleased with his first letter, which, as has been observed before, was writ on the 16th of April.

Soon after a person writes to Kelly, acknowledging the receipt of this letter of the 16th of April, and expressing his satisfaction at Illington's willingness to be reconciled with Hacket; his letter is signed 918, which number is found by the decypherers to denote the proper name of a person beginning with the letter M, and Kelly answering this letter, directs to Musgrave.

Besides which, Musgrave is found to be a person, whose pension is said to be stopt in England, at the very time that a pension granted to the late lord Marr was stopt, and is spoken of in other letters as one suspected of betraying them, with such circumstances as fix the person meant to be the late lord Marr.

The bishop's Letter to Jackson (who will be proved to mean the Pretender,) is as follows:

"To Mr. Jackson, under the cover of
M. Gordon le fils, Banquier à Boulogne sur Mer.—*April the 20th*, 1722.

"Sir; I am sorry to find by yours, which Hatfield brought, that you know our circumstances on this side so well, because that knowledge does not, I apprehend, give you any advantageous opinion of us; however let that be as it will, it is not fit you should be deceived, and rely on more than will be made good to you: If you guess at my right mind, I dare say it was agreeable to your own, and that you could not but see through the forwardness of all those unsupported, pretending people. Notwithstanding this opportunity is elapsed, I agree with you another may offer before the end of the year, though not perhaps every way so favourable: However it became me to speak strongly on that head, especially at the time when the:..... was drawn, which was long before it was transmitted, for it was kept back a great while, in hopes that deeds might have accompanied words, and sent at last rather to justify the writer in respect to that part he had undertaken, than to push on any design in so unprovided a condition. I find I was not mistaken, and am glad it was not so, though every word of that:..... passed the view and approbation of the persons concerned, but they were to be, and shall always be by me treated tenderly; though nothing shall engage me to enter deep with them for the future. I had taken this resolution before Hatfield's return, and am pleased to find that you concur with me in opinion. As soon as God restores me to my health, and some other melancholy circumstances are blown over, which will be as soon as there is any occasion for me, I will not be idle: In the mean time give me leave to withdraw myself seemingly from any engagement of this kind; I shall return to it, I doubt not, with more ability to promote the work: Not that I will decline any proper occasions that may offer themselves to converse freely with the men, and in the manner I have been used to do, for it is fit upon all accounts I should do so; but by little and little that confidence will cool, and make room, I hope, for somewhat of a more solid and important nature. I dictate this in great pain, and for that reason, and because I am not at present in any readiness to go further, shall add only my faithful assurances of an entire and unalterable respect for you. R."

That Jackson (to whom this letter is directed) means the Pretender, appears from Plunkett's cypher, in which, over against the name of Jackson, is writ 'the king;' though two names had gone before in that cypher, over against which is writ, king George.

Besides which, Plunkett's letter mentioning his and Layer's journey to Rome, is directed to Mr. Jackson; and Jackson appears from other letters to be the same with Malcolm, to whom application is made in a letter from Edinburgh, for a patent for knight baronet, and for orders to raise one or two battalions.

The cypher made use of in these three letters, is the very same that is made use of in two letters intercepted from the late duke of Ormond's agents in Spain, of which notice has been already taken. And the same cypher is also used in letters from George Kelly and to Dennis Kelly. And among the papers of the latter was found a piece of a cypher in George Kelly's hand-writing, which your committee are informed is a supplement to the cypher made use of in Jones and Illington's letters.

The clerks of the post-office, who opened and copied these letters, having been shewn several papers sworn to be George Kelly's hand-writing, have deposed upon oath, That the letter to Gordon, junior, signed James Johnson, as well as the three letters inclosed in it, directed to Chivers, Musgrave and Jackson, were all, to the best of their knowledge and belief, writ in the same hand with those papers; which joined to Neynoe's information, that Kelly had told him, he was employed in writing letters for the bishop to the Pretender's agents abroad; that the bishop never let him carry a bit of his hand-writing out of the room; and that Kelly made use of both a numerical cypher, and a cypher of fictitious names, for managing this treasonable correspondence, appears to be a strong confirmation that these three letters were dictated to Kelly by the bishop, and that the bishop is the person denoted by the names of Jones and Illington, and by the cypher 1378.

In what manner these letters were conveyed to Paris, will be observed in that part of the Report which relates to Kelly. The correspondents at Paris own the receipt of the packet from their cousin Jones; and on the 7th of May, Kelly writes Dillon word, that Illington is glad to hear his letters came safe, and wishes his next to be more to Dillon's satisfaction.

Your committee having thus laid before you the grounds they have to be convinced, that these three letters were sent from the bishop of Rochester to general Dillon, the late lord Marr, and the Pretender; they think it their duty to make some observations on the contents of them.

They observe from his letter to Dillon, that he has contracted a great intimacy and familiarity with a professed Roman Catholic, who appeared openly in arms against the late king William in Ireland, and being obliged to leave that country so long ago as the capitulation of Limerick, has ever since adhered to the same cause in foreign parts, and is at present more active and industrious than any other of the Pretender's agents in exciting a rebellion in these kingdoms. He is at this time a lieutenant-general, and has the command of one of the Irish regiments in the French service.

Your committee observe, that as the different professions of these two persons could lay no sort of foundation for any intimacy or intercourse between them, so the long absence of general Dillon makes it highly probable, that their acquaintance could not be commenced before his leaving these kingdoms; and that it can only have proceeded from their being long united and confederated in the common support of the same wicked cause.

Yet their intimacy in such, that the bishop acknowledges the receipt of several papers from Dillon, together with directions of communicating them, which the bishop owns he obeyed as far as he judged it proper for the service. Some of these papers appear to have been from the late duke of Ormond, who is attainted; and others probably from the Pretender, whom he has so often abjured.

He advises Dillon to press the soliciting supplies; and owns he has been desired to undertake that province himself, but that he had hitherto declined it; not from such restraints as should naturally have arisen in the mind of one of his character and function, but merely on account of some former ill success and mismanagement, in which he owns he had been deeply concerned.

He afterwards advises Dillon to use the same caution which he himself intended, of not trusting any thing of importance to the post, endeavouring to act within the shelter and safeguard of the laws for subverting our happy constitution.

This great caution, which (as Neynoe said Kelly told him) the bishop used, made him so extremely careful, as not to let even the man he trusted most, have one line of his own hand-writing; and shews that he was wonderfully solicitous, not to avoid the guilt of treason, but only to escape the punishment due to it, by saving himself from the danger of legal conviction.

Another of his letters is to the late lord Marr, who so lately appeared in arms against his majesty, and has since had a post of the greatest confidence and trust near the Pretender.

In this letter he owns the receipt of one from Marr by Kelly, together with verbal instructions; which, to cut off all excuse of surprize or inadvertency, he says he carefully considered, and yet entirely agreed to.

He then mentions his present sad circumstances; but comforts himself, that as they will not permit him soon to act openly, so neither is there, he thinks, any immediate occasion for it, some time being necessary towards ripening matters. So that when a proper opportunity should have offered, the mask was to have been thrown off, and then he was openly to have avowed the cause, which he has hitherto supported only in disguise.

The other letter of the bishop's is to the Pretender himself, in defiance of that law which makes the holding any correspondence with him, or his agents, high-treason. In this letter he owns the receipt of one from the Pretender; and to shew how well he deserved that confidence, he himself, who best knows the thoughts of his own heart, declares, That if the Pretender guessed at his right mind, he dares say it is agreeable to the Pretender's own.

He then encourages the Pretender to hope for a second opportunity, though not every way so favourable as the first, which was elapsed.

This favourable opportunity appears to have been that of the elections; and your committee cannot but observe, that the two most riotous elections of any throughout the kingdom, were that of Westminster, a place under the immediate influence of the bishop of Rochester; and that of Coventry, which appears by this Report to have been animated by Carte, an agent of the bishop's, and one employed by him in managing his treasonable correspondence.

He afterwards takes to himself the merit of some writing, which he had drawn up and transmitted to the Pretender, after it had first passed the view and approbation of the persons concerned: Though he says it had been kept back a great while, in hopes that deeds might have accompanied words. Which again shews his treasonable intentions to have been the result of mature deliberation; and that though he had hitherto dealt in words, yet other acts of treason were what he hoped for, and was aiming at.

As soon as God should restore him to his health, he promises to abuse it towards the prosecution of his treasons, and in the mean time desires leave to withdraw himself seemingly from any engagements of that kind, that he might return with greater zeal and activity to destroy this church and state, by placing a Popish Pretender on the throne, in violation of the most sacred oaths so frequently taken by him.

Your committee will now proceed to shew what further part the bishop appears to have had in the treasonable correspondence and negociations carried on with the Pretender's agents in France.

On the 11th of May, Motfield answers Illington's letter sent to Musgrave (Marr) the 20th of April. This was inclosed in a letter to Kelly. The substance of the answer is to condole with Illington on his loss, and to express great satisfaction on finding him in the same sentiments with Marr, in relation to their old friend and acquaintance (Hacket); and in another letter to Kelly, he lets Illington know how agreeable this reconciliation would be to Farmer, and how much to Farmer's interest.

Your committee see reason to believe, from passages in several of the letters, that Farmer means the Pretender.

It has been observed above, one of the periods of time fixed by the conspirators for putting their design in execution was the beginning of May, 1722.

On the 1st of May, Dillon's secretary writes to Kelly, "That Mr. Jones cannot take a better time to have himself fitted with an easy saddle, there being a number of saddlers idle in France at present, who in case of wars would be so very busy there would be no coming at them." This is explained by what Neynoe said, that in Kelly's cypher 'saddlers' stood for Irish soldiers, though he did not know any letters had been intercepted where that term was made use of; and in Plunkett's cypher 'saddles' stands for regiments, and 'girt' for 100 men.

On the 2nd of May, Dillon himself acknowledges the receipt of his cousin Jones's letters of the 20th of April, and "expresses much concern for that lady's ill state of health, being much afraid his own small concerns can hardly be settled to satisfaction, till she is able to solicit in his favour."

On the 7th of May, Kelly writes to Musgrave (Marr,) "That he had communicated his letter to Mr. Jones; and that Mr. Jones desired a letter from Musgrave or Farmer" (the Pretender) "to Hacket, to bring him to town, without which it would be impracticable for them to do business together. That Jones finds Armstrong and Company very loth to be any way concerned, having no opinion of the present hands; however that it is still necessary to make the most of them."

Who is meant by 'Armstrong and Company' does not appear to the committee.

On the 9th of May, Dillon's secretary writes to Kelly, "That if this post had not brought an addition of three to the six formerly come from Repney, it is easy for Mrs. Jones to see what is still wanting for the purchase she intends to make." Who is meant by Repney is not certain; but in the following part of this Report there will appear grounds of a probable conjecture.

This passage relates to a bill of exchange (of 6,000*l.* probably) sent over to Calais, and thence to Waters the Pretender's banker at Paris, on the 16th of April; the receipt of which is acknowledged in several letters both to George Kelly and Dennis Kelly. This paragraph, which says, "That if three more are not come, besides the six from Repney, it is easy for Mrs. Jones to see what is still wanting for the purchase she intends to make;" shews plainly, that Jones was at least privy to that remittance: which agrees with what Pancier has deposed upon oath, that he was told by Skeene, among other particulars relating to the conspiracy, that a large contribution had been raised and put under the management of the bishop of Rochester, which was called their military chest.

On the 10th of May, (three days after the encampment) Kelly writes to Dillon's secretary, "That it was reported the king had absolutely refused to put off his journey, and intended to set out early next month; and that if

they could then compass barrels enough, the sooner the wine comes, he believes, the better." He adds, "that Jones promises to be a good customer, and that he hopes Hacket and Jones will give them the finishing stroke." The time of year in which this letter was writ, and the absurd supposition of its being more difficult to find 'barrels' than 'wine,' shew sufficiently that these words are not to be taken in their literal sense.

Your committee are informed, that 'wine' was explained by Neynoe to mean invasion, though he had never been told that any such word had been made use of in these letters, nor had been asked any question about it; and in Plunkett's cypher, 'barrels' is explained army, and 'vines,' 1,000 men.

On the 19th of May Dillon's secretary writes to Kelly, "That he is assured by good hands, Hacket and Jones are the best able to adjust his particular concerns; that he does not question their good dispositions, and that doing it timely will be a double merit."

On the 19th of May, Kelly was taken into custody, about the 7th of June he was admitted to bail; and on the 11th he writes an account of his examination to one Gerrard, whom your committee believe to be sir John D'Obryan, whom Kelly owned to be employed by Dillon in writing for him. In this letter Kelly says, "He was chiefly questioned about a little dog he got from France, and about five or six cant names, which were Illington, Jones, Cane, Howell, Quitwell and Hacket, and that whoever Illington is, he was the person chiefly struck at."

On the 18th of June he writes to Dillon, "That it is absolutely necessary to make no more use of their present account-book, since those that have got part, may by the same method have got the whole; and that it will be highly improper for him to meddle with business, at least for some time."

From this time forward your committee observe, that the names of Jones and Illington are no more heard of in the intercepted correspondence; neither does Kelly so frequently write letters of great business, but in his stead Thomas Carte, clerk, takes up the management of the bishop's correspondence.

The letters from Carte are signed, and those to him directed by the name of George Williams; and Mrs. Harbin, to whose house they were directed, having been examined before some lords of the council, has deposed on oath, that Carte desired her to take in letters so directed, and that she delivered one so directed into his own hands.

And in the cypher taken among Dennis Kelly's papers in George Kelly's handwriting, Mr. Carte is designed by the fictitious names of Thomas and Trotter, who appear, by comparing several passages in the letters, to mean the same person with George Williams.

From the time of George Kelly's being first taken up, the bishop of Rochester is denoted by the names of Rig and Weston, as will appear from the following circumstances.

On the 30th of August, Kelly writes to Dillon a long letter, which contains the particulars of the bishop's being taken into custody, examined and committed. On the 14th of September Dillon's secretary writes to Kelly, "That his letter on the 30th of August came safe, and that the particulars he gave of Mr. Rig's case were very acceptable to Dillon, whose concern for a true and worthy friend and relation cannot be doubted, and a longing desire to know her entirely clear of her distemper." In the same letter he desires to know what is become of Carte.

That Rig denotes the bishop, is farther confirmed by these particulars: Kelly in his first letter after his enlargement, writes word to Gerrard; "All I can do now, will be only to deliver to your cousin Rig any goods that you can send by private hands: he is determined not to receive them any other way, and indeed I cannot say he is in the wrong. How far this late affair may affect him, I cannot tell."

Now, since it appears that Kelly was formerly employed in conveying letters to and from the bishop (which are often called 'goods' in the intercepted correspondence) since the bishop himself had desired in his letter to Dillon, that no more letters of consequence might be trusted to the post; and since Kelly's examination about the dog could affect no one but the bishop, it may justly be concluded that Rig and the bishop are the same.

That Weston is the bishop will appear from the following circumstances:

On the 7th of June, Dillon's secretary writes to Carte, and acknowledges the receipt of a letter from him of the 28th of May (which was soon after Kelly's being taken up), and after expressing great satisfaction, "That the late rumours of a plot had not occasioned a total interruption of commerce, nor obliged any of their correspondents to go aside;" he adds, "That Dillon desires to be most kindly remembered to his good friend Mr. Weston, for whom he was in the greatest concern, on account of a story that his clerk had been laid up for debt; but that he hopes Carte's next letter will put him at full ease in this matter."

This plainly has reference to Kelly's being taken up; and his relation of clerkship to the bishop has been fully explained by what goes before.

On the 14th of June, Carte writes to Dillon's secretary, and endeavours to put him at full ease, in relation to Mr. Weston, by telling him, "That Mr. Weston is in the country, that he saw him two days ago: that he is perfectly well, and as easy in all his affairs as any man alive, and very much Dillon's humble servant." It appears by depositions annexed to this Report, that the bishop was in the country at that time.

On the 14th of July, Dillon writes to Weston under cover to Carte; and desires he will ad-

mit one Skinner (sent over from France express) to receive his commands.

On the 26th of July, Kelly writes word that Rig and Skin had been lately together; and that before they met, Rig sent to him to know how Skin stood with Dillon and his partners.

On the same day, Stanley (who appears by the matter of his letter to be the same with Skinner) writes to Dillon, "That he had been with the correspondent, to whom the letter of credit was sent, and had partly engaged him in his arrack affair." On the 30th of July, Carte writes word, he had the honour of introducing Stanley to Mr. Weston, and mentions the arrack affair, of which notice will be taken in its place.

From these passages it appears, that Weston (the name made use of by Carte) means the same with Rig (made use of by Kelly) which last was shewn before to mean the bishop of Rochester.

Rig therefore, and Weston, being made use of to denote the bishop; it remains to be considered what part Rig or Weston appear to bear in the sequel of the intercepted correspondence.

It appears by the letter from Dillon's secretary of the 7th of June, that they apprehended in general, on Kelly's being taken up, that some of their correspondence would be obliged to go aside; but that their greatest pain was for Mr. Weston, whose intimacy with Kelly was such, that Kelly is stiled his clerk, which is no improper name for one that kept the cyphers, which are styled throughout the intercepted letters, 'books of accompts;' and in Layer's cypher are called 'rentals.' If Kelly had had no secrets to reveal, the pain for Mr. Weston, and the fear of other correspondents going aside, would not have been so considerable.

On the 14th of June, Carte sets them at ease in relation to Weston, who was, he says, as easy in his affairs as any man alive; which might be the case, Kelly having burnt his papers, being bailed out, and at liberty to assure his friends that the lords could get nothing out of him at his examination, where he strenuously denied his having ever heard of the names of Jones or Illington.

On the 11th of June, Kelly sends his friends at Paris an account of his late misfortune; and after complaining of their neglect in not bailing him out sooner, and intimating that such usage might have provoked a passionate man to betray their secrets; he says, your old friend Rig, indeed, offered all that could be expected from the poor man. This passage proves pretty plainly, that Rig was one of those whose secrets it was in Kelly's power to have betrayed; and who therefore thought himself principally concerned to keep Kelly in good temper, by all possible offers of assistance.

Kelly in his next letter of the 18th of June, says, "The occasion of my misfortune I will lay at nobody's door in particular; though your old friend Rig seems to believe, it has rather proceeded from some pretended friend than any real enemy: and as his conjecture lies on this side, you may easily guess the point it tends to." This passage shews that the discoveries made, were known by Rig to be well founded; since no one could be led to suspect, that an information entirely false should proceed from some friend entirely in the secret: besides it shews Rig had friends, in whose power it was to betray him; and that those friends were known to the correspondents in France, since Kelly says, they are able to guess who it is that Rig suspects on this side. This is a farther intimation, that Rig had friends on the other side of the water, in whose power it was equally to have betrayed the secret.

Kelly then tells Dillon, "That it is absolutely necessary to make no more use of their present accompt-book; since they that have got part, may by the same method have got the whole. This is a direct confession, that the names of Jones and Illington, and others on which Kelly was questioned, were really a part of the cypher in use between him and his correspondents in France: And as Kelly writ word that Illington was the person principally struck at, and knew very well by Mrs. Barnes's confession about the dog, who Illington was understood to be; it amounts to a confession, that that exposition of the name of Illington was true.

He then adds, "All that lies in my power now, will be to deliver to your cousin Rig any goods you can send by private hands; he being determined not to receive them any other way." So that by private hands Rig was still willing to receive them.

However Kelly says, "If your business can be conveyed any other way to him, you cannot do me a greater favour: For to tell you the truth, it is against my opinion and inclination to have any farther dealing that way." This shews what dealing Kelly had hitherto had; and at the same time explains how Carte comes to be employed in managing the bishop's correspondence for the future.

Kelly adds, "That he does not know how far this late affair may affect Rig. This shews that he knew Rig was engaged in some criminal correspondence; since the receiving a dog from France, or being called by a fictitious name, could not otherwise have affected him.

On the 16th of July, Carte writes a long letter about some MS. and Weston's opinion of them, as also that of Finch. What is meant by manuscripts, does not appear; neither is it certain who Finch is, but he is spoke of as being in high repute with Weston.

On the 1st of August, Dillon writes to Carte, "That he cannot apply to a more sufficient judge than Weston about his concern with Mr. Finch:" and he often repeats, "That he makes a most particular case of Mr. Weston's judgment; and that he relies entirely on Weston's friendship and advice," and other expressions of the like nature.

On the 14th of July, Dillon writes a letter to

Weston (the bishop) enclosed to Carte, in the following words:

"To Mrs. Weston, inclosed to Mr. George Williams, at Mrs. Harbin's over against Somerset-house.

"*Saturday 25 July*, 1722.

"Dear Madam; I cannot on any reasonable grounds complain of your silence, though long it appears, because I am informed of the situation of your health, and the concerns your family are in, by bankrupts and law-suits. Permit me, however, to fulfil a part of my duty in presenting you my best respects, and unalterable attachment to you and yours. I wish this may find you so far recovered from past mischances, as that you may be once more in a humour of affording me a comfortable line. I have all the stock I bought lying by, and I intend it shall remain so, until you advise me of the proper time to dispose of it: Being fully convinced, that in the slippery age we live in, I cannot confide to any better than you. I hear many say, that our stocks will infallibly rise again to a good height, by Mr. Walpole's wise and able management; from whence I should hope not to be so much a loser in reserving mine. Still my lights at this distance can be but very imperfect: Therefore, dear Madam, I will earnestly pray your direction, when you find leisure to grant me this favour, as also of forgiving this trouble, for which I offer amends in any manner I can be of service to you. The few acquaintances of yours I converse with in these parts, are well: and rely, as I do, on your friendly advice in a most particular manner, about their concerns in the funds. They desire you will be pleased to admit Mr. Skinner to receive your commands, who is directed to call upon you, and explain some particulars too tedious for a letter. He seems to be very ready at business, and will obey your orders punctually. I am, with the greatest esteem and sincerity,—Dear Madam, your most humble, and most obedient servant,

"DIGBY."

On the 16th of July, Dennis Kelly writes word to France, that Skinner arrived in town the night before; that he had been to wait on him, longing much to know how the fall of stocks affected his friends.

On the 26th of July, Kelly writes to Dillon's secretary, "That Rig and Skin had been lately together; and that before they met, Rig had sent to him, to know if Skin stood well with Dillon and partners." He adds, "That Rig still seems to promise his assistance, if he can get the better of his suspicions: and that Rig went into the country, the day after Skin and he had been together." It appears by a deposition annexed to this Report, that the bishop came to town on the 19th, and returned to Bromley on the 21st of July.

On the same day that Kelly writ, Stanley (who is the same with Skinner) writes to Dillon, "I have been with your correspondent to whom the letter of credit was sent, who has partly answered my demands, and promises to comply in all points with your directions." He then adds, "I must now give you an account of what product may be hoped for from the public funds."

Then follows a paragraph, some few letters of which are in cypher, but as your committee is informed, in such an easy and obvious one, that any one that reads it, may with the least attention decypher it. In this paragraph, instead of saying a word about the funds, he acquaints Dillon, "That they are certainly betrayed by some one entirely in the secret, who has given such light into all their affairs, that the most minute circumstances are perfectly found out; that therefore he must caution him, as he is requested, to be very careful who he converses with, even at Paris, without excepting any one."

This paragraph explains sufficiently what is meant by Stocks and Funds; and it is remarkable, that in Plunkett's cypher, 'brokers' is explained 'agents.' The owning themselves discovered by some one entirely in the secret, proves there was a secret, and that the discoveries of the government were well founded.

He then adds, "I have partly prevailed with the correspondent (Weston) to undertake what he had firmly resolved against, which is the procuring arrack, which cannot fail succeding by that channel." And on the 30th of July, Carte writes to Dillon in the following words:

"I had the honour of introducing Mr. Stanley to Mr. West, who received him in the best manner, and assured him of his readiness to serve him in what he could. Mr. St. was much pleased with him; but did not engage him to solicit in his arrack affair, which yet is of the greatest consequence to him, and Mr. W. is most capable of serving him in, because in the esteem of all the commissioners in whose power it is to relieve him in the case. And as Mr. W. would do it effectually, if engaged in it, so Mr. Stanley desires me to beg the favour of you, to request the favour of Mr. W. in a letter from you to Mr. Stanley, which he is sure would fortify the good inclinations Mr. W. has already to serve him, and effectually engage him in the thing."

The original of this letter being stopped, is, as your committee are informed, in Carte's own hand-writing.

What is meant by these mysterious passages about arrack, must be left to the conjecture of the house.

If this be compared with the bishop's letter to Dillon, and with Pancier's deposition, it is not improbable that by 'arrack' may be meant contributions of money.

But whatever is meant by it, the committee observe, that it was a point of the greatest importance to the conspirators, since it was thought necessary to be laboured by a person sent from France on purpose; and the bishop's reluctancy to come into it argues it to have been something very dangerous, and beyond the ordinary lengths of his compliance.

And they observe that the principal direction of the conspiracy, under all the disguises of stocks, manuscripts and arrack, is submitted to the bishop's judgment, on which, it is often said, they do entirely rely.

Your committee having thus laid before you the principal matters in the intercepted correspondence, that relate to the bishop of Rochester more immediately, will now proceed to state to you what they find in the same correspondence, relating to George Kelly; who, as has been shewn before, acted so much under the direction and influence of the bishop, that it cannot be supposed he would take any step of consequence in an affair of this nature, without the bishop's being at least made privy to it.

The committee forbear repeating what was mentioned before, about the heads of memorials to the regent, brought by Kelly to Neynoe; but they find some farther particulars in Neynoe's papers, relating to Kelly alone.

"That Kelly had owned to him his having been formerly at Avignon while the Pretender was there; that at his return from France last winter he brought over several papers and letters, and among the rest one in French, in the hand-writing of Dillon's secretary, intituled 'Reasons humbly offered to cardinal Du Bois, proving that the establishing the House of Stuart on the throne of England, preferably to that of Hanover, is the real interest of the crown of France,' or to that effect. That this piece was brought to Neynoe to be translated, which being written by a Papist, and turning much on the advantage that would accrue to Popery, Neynoe advised against publishing it.

"That Kelly told him at other times, that one hundred thousand pounds, nay, fifty thousand pounds would be sufficient for bringing in the Pretender; and that he would warrant that sum would be found.

"That whenever there happened to be a stand made for the Pretender great numbers of volunteers from France would appear for him:" Which agrees with the accounts sent from thence, and with the letter from Dillon's secretary about securing 'sadlers,' which Kelly explained to Neynoe to mean Irish soldiers.

Neynoe farther said, 'That Kelly proposed to him to go over to France, and to settle in lord Lansdown's family, where he said he might be of service, and promised to make his reception easy." And your committee observe, that the very time when Neynoe was taken going to France, Kelly writ to Dillon's secretary, "That he would soon see a young fellow, whom he had mentioned to him some time before, and that he might rely on his honesty."

Neynoe farther declared, "That Bingley his fellow-traveller (now in custody), lodging in the same house with Kelly, when Kelly was first taken up, burnt a bundle of writings he had that day received from Kelly.

John Malone (formerly servant to Mrs. Barnes), who waited on Kelly at his lodgings, has deposed, that this Neynoe, John Plunkett (now in custody), Carte and Dennis Kelly, often visited George Kelly.

As George Kelly is frequently designed by a great variety of fictitious names in the intercepted correspondence, the committee think it proper first to apprize the House, what reason there is to assert that those names do really belong to Kelly, and then to shew the nature and import of the correspondence carried on under those names.

It appears to your committee, that since the beginning of April 1722, (the time of Kelly's last return from France) a great number of letters going to France were by order of the government opened, and copies of them taken; and that several of those letters, though signed by different names, were observed by the clerks who copied them, to be all in the same hand-writing; and one of the originals having been stopped for a specimen of the hand, and having been shewn to John Malone, he has deposed upon oath that he had often seen George Kelly write, and that he believes it to be his hand. Three other papers, seized at Mrs. Barnes's, having been shewn to Malone, he has sworn them severally to be Kelly's writing; and the same three papers having been shewn to the clerks of the post-office, they have sworn, That to the best of their knowledge and belief, as well the original letters stopped, as the others sent forwards, which were signed, some of them Johnson, others Hatfield, J. J. G. H. and Wilkins, were all in the same hand with those three papers so attested.

This general proof fixes several of the names to belong to Kelly; and it is remarkable, that if any one of the names above-mentioned be allowed to belong to Kelly, all the rest by which he signs, or is directed to, may, by the series of his correspondence, be shewn to belong to the same person.

But your committee farther observe, that almost every individual name he makes use of is attended with some particular proof, which determines it to belong to him; of which notice will be taken as the names are mentioned,

It has been observed already, that he came from France about the 19th of December, N. S. 1721, and that a letter was found among the bishop's papers, dated the 16th of December, in which mention is made of a letter received by Johnson, and an answer returned some time before in Johnson's hand.

Neynoe declared, that the last memorial to the regent, which Kelly employed him to draw up, was in December, 1721, and that it contained a demand of five thousand men for the assistance of the conspirators. In February following Kelly went again to France, and towards the end of April, the government received unquestionable accounts, that repeated application had been made to the regent for such a body of forces.

The bishop in his letters (writ soon after Kelly's return from France) acknowledges the receipt of a letter, and verbal instructions from Marr, by Hatfield, and of a letter from the Pre-

tender by the same hand, and mentions Hatfield as knowing his present unfitness for business.

But the letters signed Hatfield, which were copied at the post-office, are sworn to have been in the same hand with other papers which are sworn to be Kelly's hand-writing. And it appears by a letter from Marr to Hatfield, that he was the person to whom the dog was sent for Illington; which shews Hatfield to be Kelly, and confirms Neynoe's information, that Kelly received letters directed by the name of Hatfield. And it appears, that he not only brought over letters from France, agreeably to what was told Mrs. Levett by Mrs. Barnes, and confirmed by Neynoe; but that he was trusted with a letter to the bishop from Jackson, the name made use of for the Pretender in Plunkett's cypher; which cypher it is evident Kelly was no stranger to, since he makes use of several other names (Lane, Howel, Xoland, Cane,) found in that cypher, to denote the very same persons that are there expressed and defined by those names.

On the 21st of April, Dillon's secretary writes to Joshua Vernon (which will be shewn to be another of Kelly's names), congratulating his safe return, and tells him, "That his first letter was very pleasing to Mr. Lane (which is explained lord Marr, in Plunkett's cypher), who waited with much impatience for those of Monday, hoping to receive a more particular account of his bills, which he daily becomes more pressed for; the prospect of a good vintage increasing by late showers which had dropped there, and raised the spirit of the labourers. He adds, that it seems more plain, that on advances of ready money, good bargains may be proposed."

He afterwards tells him, "That Dillon advises the money which Kelly mentioned in Clynton's hands, should be equally divided between Medley and the Pretender." Who Clynton is, does not appear to the committee; but they see reason to believe, from passages in other letters, that Medley means the late duke of Ormond.

He then tells Kelly, "That Farmer and family are well, and that Mrs. Hughes became so very uneasy she was dismissed, and is on return."

This passage shews that Farmer means the Pretender, it being well known that Mrs. Hughes was nurse to the Pretender's child, and was on her return to England about this time.

From this letter your committee observe, that Kelly was employed by Marr and Dillon, in soliciting supplies for the service of the conspirators; and that he had acquainted them of a sum of money lodged in the hands of one, whom they call Clynton, which they advised should be equally divided between the Pretender and Ormond. Whether Kelly was considerable enough to have this advice sent him for his own government and direction, or was only to be the channel for conveying it to some other person of greater distinction, is left to the consideration of the House.

On the 23rd of April (as has been observed above) Kelly sent the bishop's packet of letters under cover to Gordon at Boulogne, with orders to him to deliver it to a tall black man, who would soon call on him for it.

This person is in other letters called Crow; and appears to your committee by several concurrent proofs, to be James Talbot, an Irish papist, concerned in the Preston rebellion, and now in the Spanish service.

Kelly, in his examination before the committee, owned his being intimately acquainted with this Talbot, and his having seen him the morning he left England; and a letter signed J. Talbot, was seized among Mrs. Barnes's papers, in the same hand with a letter sent from France to Kelly, signed J. T. which is an answer to one writ by Kelly to Crow.

On the 29th of April Gordon acknowledges the receipt of a packet (already proved to be the bishop's), and says, he delivered it to the gentleman as he was directed, who set out for Paris on the 30th of April. On the 1st of May, Dillon's secretary writes to Kelly, "Your friend Crow is arrived safe, and delivered the three books you gave him, as directed."

On the 2nd of May, Dillon himself writes to James Baker (which will be shewn to be another of Kelly's names) and says, "I saw your acquaintance Crow two days ago, who delivered me a present from my cousin Jones."

And on the same day James Talbot writes to Kelly, "That Mr. Gordon gave him the packet at Boulogne, which he delivered safe on Monday last, as directed." He adds, "the person received me very obligingly, and was much more open to me than I expected. Then, and since, he let me know he does not despair of doing his business."

On the 7th of May, Kelly writes to Dillon, "That Illington was glad to hear he had received his letters by Crow, and wished his next might be more to Dillon's satisfaction."

From these passages it appears at one view, that the bishop's letters were sent by Kelly to Boulogne, by the post; and thence conveyed to Dillon at Paris, by Talbot, Kelly's intimate friend.

On the 24th of April, Dillon's secretary writes to Kelly a long account of one Xoland (Nicholas Wogan) who was to command one of the ships that was to be hired of some Swedish merchants at Cadiz.

This agrees with Mr. Craufurd's letter of the 25th of July, N. S. 1722, in which he says, that Nicholas Wogan was to have the command of one of the ships under Morgan, one of which having been lately taken at Genoa, the commander (as your committee are informed) has writ over hither, that she was hired of some Swedish merchants at Cadiz, with several other circumstances, which agree entirely with this letter to Kelly, and shew for what use those Swedish ships were hired.

In the same letter Dillon's secretary takes

notice "How kindly Freeman (the Pretender) had spoken of Kelly in his last."

On the 30th of April, Kelly answers this letter, but calls Nicholas Wogan by the name of Moore, and says, "I wish his chief may succeed in his journey." Which being compared with the accounts sent about that time from Mr. Davenant at Rome, that the Pretender was preparing to embark, makes it more than probable that he is the chief to whom Kelly wishes success.

Kelly then gives an account of a very important conversation he had with one Hore. Who is meant by Hore, your committee will not take upon them positively to determine; but by comparing several passages of the letters together, it appears to them highly probable, that it is sir Harry Goring; in which opinion they are the more confirmed by Hore's being mentioned as ill of the gout in France, on the 14th of September: and Kelly takes notice in his pocket-book, that sir H. G. went to P. the 23d of August, which was the day before the bishop was taken up.

In this letter Kelly says, "Hore is most impatient to have a more satisfactory account from your side; and hopes there may be room now to expect it, since there was nine remitted by Repney: he will soon, as he tells me, send you two more, which with the 12,000 arms provided by Mansfield's (Ormond's) relations, and which are now ready to be sent wherever designed, and paid for too, will, he hopes, bring matters to some prospect of bearing."

Your committee observes, that this impatience of Hore falls in, in point of time, with the account lord Orrery gave Layer, that lord North and Grey, sir Harry Goring, lord Strafford and others, were going to do a rash thing in favour of the Pretender. That it likewise agrees with the letter to Dodsworth, mentioned in the former part of the Report; where it is said, "That the hopes given by G. to expect a great sum, and by N. that he had raised 20,000*l.* induced Ormond to supply Morgan, and to make other necessary provisions;" part of which provisions appear to have been the 12,000 arms mentioned in Ormond's letter of the 27th of April, in Mr. Stanhope's the 8th of June, and again in this letter of Kelly's.

Kelly adds, "That he hears Ormond continues still upon the old string, that he can get no officers, and says, I wish the sending over Hore's, &c. commissions may not do more hurt than good; for that affair is already become no secret, and may pick some friends, as well as put ill-wishers on their guard."

This passage shews that the scheme for an insurrection was at that time in such forwardness, that commissions were actually sent over; and confirms the account of the late duke of Ormond's being expected with officers and arms to support it.

On the 1st of May, O. S. Dillon's secretary writes to Kelly, "That he believes they have a sufficient quantity of barrels bespoke for the wine they intend to buy; and that he hopes Clynton and company have sent Malcolm half money, which Hore said he had, to pay for the barrels which Jacobs has at his disposal."

It has already been shewn that Malcolm means the Pretender, and as Clynton's money, which was before to be divided between Ormond and Jackson, is now to be sent half of it to Malcolm, this is a farther confirmation that Jackson means the Pretender; and agrees with the intelligence from France, of sums sent about this time to Ormond and the Pretender.

In a letter to Kelly of the 2d of May, was inclosed one from Dillon to Jemison, who appears to be some intimate friend of John Plunkett's, and was present in France, when the cyphers were settled between Dillon and Kelly; but his real name is undiscovered.

In this letter Dillon acquaints Jemison, "That Mrs. Freeman intends to bring her cause to a trial as soon as possible; and that he believes Mr. Abel's departure will be no detriment to her pretensions." This passage, compared with other letters, shews that by Freeman is meant the Pretender, and Abel his majesty; and confirms the design of an insurrection at the beginning of May.

Dillon then desires Jemison, "To assure his cousin Rogers (John Plunkett) of his best respects, and how much he depends on her friendly and kind offices in his family-concerns, which have great need of so good assistance."

Plunkett being examined by the committee in relation to this letter, denied his knowing any such person.

On the 7th of May, Kelly writes to Dillon, acknowledging the receipt of the letter for Jemison, mentions a long discourse he had with one whom he calls Mr. Fox, who resented his being put out of the Pretender's service by Dillon; but Kelly endeavoured to convince him that Dillon had no hand in it, and laboured to regain him. Who Fox is, does not appear to your committee.

Kelly then takes notice, "That the Pretender's favours to Hore, &c. had given great offence; and that Rogers (Plunkett) hearing of the freedom which Hore and some of his partners took with him, is much disobliged at it, and ordered Jemison to tell Dillon so."

Your committee observe from this passage, that Plunkett is treated as one whom it was thought of consequence not to disoblige; and that Kelly was apprised of his intimacy with Dillon.

Kelly then gives an account of his having called on Mrs. Medley's (the duchess of Ormond's) chaplain. The letter which desired him so to do, was directed to James Baker; and this, in which he says he has called upon the chaplain, is signed J. J. which shews that James Baker is the same with J. J. which are the initial letters of James Johnson.

On the 10th of May, Kelly writes to Dillon's secretary an account of the discoveries made by the government, and the encampment of the

king's forces; but your committee observe his assurances of success were so strong, that in the same letter he says, "The king will go abroad next month, and if you can then compass barrels enough, the sooner the wine comes, I believe the better."

On the 19th of May he was taken into custody; and it appears to your committee by the deposition of one of the messengers who seized him, that when he was seized he offered to draw his sword, but was prevented. That the other messenger being called out of the room to rescue one of their companions, who was in danger of being murdered in the street, Kelly called to the people of the house to lock the door; and seizing his sword, which had been laid by in the window, drew it, and made a pass at the messenger, who verily believes he did it with an intention to murder him: that he afterwards made a second pass, and swore if he came in again he would stab him; and said, that if the secretary of state who signed the warrant had been there, he would have done the same. That the messenger going out to call for help, and returning within a minute, was told, that Kelly had in the mean time burnt one of the papers seized upon him.

Another of the messengers has deposed, that before Kelly offered this violence, he had been shewn by the messengers the scutcheons or badges of their office, and likewise had been shewn their warrant signed by one of the secretaries of state: that the warrant was also shewn to a person present in the room, who perused it, and declared to Kelly, that it was a sufficient authority for apprehending him.

Your committee think it unnecessary to make any observation on a behaviour, which implies his having so strong a sense of his own guilt, that he rather chose to stand all the consequences of resisting and assaulting his majesty's messenger in the execution of his office, than to let his papers fall into the hands of the government; fearing (as may justly be concluded) that such a discovery might prove fatal to himself as well as others.

But your committee find, that however careful he was to destroy all his papers, yet one was seized upon him and preserved, which is of itself sufficient to prove him concerned in the treasonable correspondence above set forth.

It was a list of directions, in the following words:—"To Anthony Saunders esq. or Mr. Joshua Vernon, at Will's coffee-house, Covent-Garden, London."—"To Mr. James Baker, or Arthur Stephens, esq. at Burton's coffee house in King's-street, near St. James's, London."

By the three first of these names, most of the letters to him above mentioned came directed; and your committee find, that a person having been employed to watch at Burton's coffee-house, who should take up letters directed to Mr. James Baker at that house, has deposed upon oath, that on the 14th of May, a letter so directed being left there by the postman, George Kelly came in and took the same, opened and read it, and went out of the house with a letter in his pocket to Mrs. Barnes's.

It appears to your committee, that when he was examined before the lords, the 21st of May, 1722, he endeavoured to account for his receiving letters by various names, by saying, that one Mr. Talbot, who was under a cloud, and who went for France or Spain about a week before, had desired him to call at coffee-houses for letters directed to the said Talbot by several names; and particularly that the letter directed to Baker, which he owned he took up, was for the said Talbot. Yet your committee observe, that the said Talbot arrived at Boulogne on the 25th of April, and did himself send a letter from Paris to Kelly, on the 2d of May, signed J. T. directed to Mr. James Baker at Burton's coffee-house aforesaid; and letters continued to be sent by that direction from Paris, till the time that Kelly was taken into custody, though Talbot was all that time in France.

Kelly being examined by your committee in relation to these letters, persisted in the same account, that they were for Talbot, and that the occasion of Talbot's going abroad was, that Talbot had received an account of general Crofton's being dead, and of his having left him what he had. Which particular, your committee observe, agrees in part with Neynoe's account, that Kelly had shewn him a letter at Burton's coffee-house from Dillon's agent or secretary, in which it was said, that the death of general Crofton would be a great loss to Mansfield, which name Kelly explained to him to mean the late duke of Ormond.

Kelly farther owned to your committee, "That he went to France the beginning of the winter 1721, and again the spring following, on account of transactions he had in the stocks there. That he was desired by a brother of the lord Dillon's to cary over to general Dillon an act of parliament relating to the estate of that family, but that this was the only paper he carried. That he saw Christopher Glascock, who is a captain in Dillon's regiment, and knew sir John D'Obryan, who is Dillon's secretary, and had likewise seen Colin Campbell of Glenderoule at coffee-houses, but had never spoke to the latter."

Yet your committee observe, that as in his letters he often sends services to sir John and Christy, he does also to Glin and Collins, which last name is explained Genderoule in his own cypher taken among Dennis Kelly's papers. And when he was examined before the Lords, he owned his having received letters from one Glasgow at Paris, which name in Plunkett's cypher is expressed by the fictitious name of Howell, and has been shewn above to mean the same with Quit-well, Querry, Bonnaville, and other names which belong to Dillon's secretary, and are subscribed to several treasonable letters from France.

Kelly denied to your committee his being at all known to the late lord Marr, or Alexander Gordon of Boulogne; though he owned his

going by the name of Johnson, by which name the letter to Gordon was signed, and the answer from Gordon directed: and the letter from Marr was directed to Hatfield, which name has been shewn to mean the same person as James Johnson, and has been proved by other circumstances to belong to Kelly.

He owned his writing to a broken banker at Paris by a fictitious name in relation to stocks, but said he had forgot the name, and that he never received a letter in his life signed by a fictitious name.

But your committee had reason to believe from the whole tenour of his behavour at his examination, that he grosly prevaricated with them; for at his first coming in, before he would make any answer, he very formally insisted that nothing he should then say should be made use of against his own life, nor as evidence against any other person: and upon these conditions he promised to answer directly to all questions that should be asked him.

Your committee seeing some reason from the manner of his insisting upon these conditions, to believe that he was disposed to act ingenuously with them, ordered him to withdraw, that they might consider amongst themselves, how far it was in their power, or proper for them to agree to conditions which would have made his examination of no effect; and upon his being called in again, and receiving such answer as the committee thought it in their power to give, he denied his knowing any thing at all of the conspiracy. This your committee apprehend to be altogether inconsistent with the conditions he insisted on, which manifestly implied that a confession of all he knew might endanger his own life, as well as effect other persons. But in the course of his examination he owned to them, that the promise they had given him was not satisfactory, though, as he pretended, he could not have answered their questions in any other manner, if their promise had come up to the conditions he insisted on.

Your committee observe, that Kelly was admitted to bail from his first confinement about the seventh of June last, and they conceive it to be a great aggravation of his guilt, that he immediately took advantage of this enlargement to resume the same treasonable correspondences, and to send triumphant accounts to France, of his having baffled the government by the hardened obstinacy of his behaviour; thereby improving, as far as in him lay, the liberty granted him by the favour and indulgence of the laws, to the subversion of our happy constitution. For on the 11th of June, but a very few days after his being out on bail, he sent a long letter to Gerrard, (whom your committee believe to be sir John D'Obryan, as has been already observed) in which, the better to disguise the matter, he gives an account of his cousin's late misfortune, as from a third person; but in a subsequent letter to Dillon the 18th of June, he owns the writing this letter himself.

In this letter to Gerrard he says, "That he was bailed the Thursday before, and that the judges were never known so severe in any case of the like kind: that most of the questions asked him at his examination were about a little dog which he got from a surgeon when he was last in France; that they mentioned no persons to him but general Dillon, and one Mr. Morgan: that to the first he owns he is a little known, having carried over an act of parliament to him that concerned his family, but that the latter he never saw: that lord Carteret had a list of five or six cant names, as he called them, which were, Illington, Jones, Howell, Quitwell and Hacket, and what he never heard of before; that however they would persuade him he knew some persons that were meant by those names, which he vows he never did; and whosoever Illington is, he was the person principally struck at. That he is not at all satisfied with the behaviour of his friends: that Gerrard's old friend Rig indeed offered all that could be expected of the poor man; but others in whose power it was to do more shewed no concern at all for his misfortune. That he lay ten days in the closest confinement, without so much as a message from any of those he depended most upon; that it is well he had no secrets to reveal, since such usage might provoke a passionate man, and that the world is pretty well convinced that he had not, since no persons seemed to be the least apprehensive that he could do them any mischief.

"That this shews what the friendship of some people is; but whilst there is one righteous person, we must, for his sake, overlook greater misfortunes.

"That he is very well, and under no great concern for any thing as to himself but the expence, having more than his own to answer."

He concludes, with desiring Gerrard to direct under cover to Mr. Andrews, at the Dog and Duck in St. James's-street.

Your committee find, that after this time several letters did come from France, directed to Mr. Andrews at the Dog and Duck, and that the master of that house having been examined, has deposed on oath, "That one Andrews ordered him to take in letters that should come by the foreign post so directed, and that three of those letters were directed to the Dog and Duck in King-street, by mistake; but were afterward brought to his house in St. James's-street, and taken up by Andrews, who happened to be there when they came in."

It appears farther to your committee, that the said Andrews having been examined, has deposed on oath, "That Mr. Johnson alias Kelly desired him to take in some letters directed to him, Andrews, at the Dog and Duck ale-house in St. James's-street; that he received in the whole four or five, in the months of July, August and September last, to the best of his remembrance; that they appeared by the charge of postage to be foreign letters, and that he delivered them un-opened to the said

Johnson alias Kelly, who paid him the postage; that he, Andrews, knew nothing of the contents, nor ever returned any answer to them."

On the 18th of June, Kelly writes to Crow (James Talbot) giving him an account of his late misfortune, and the reasons of his silence, and mentioning his design of going over into France, as soon as his appearance in Westminster-hall should be over.

"He then sends his service to all friends, particularly to sir John and Christy (sir John D'Obryan and Christopher Glascock,) and desires Talbot to tell the latter he must find out some other address for him to write by, since he has good reasons for not using the former, which have prevented him from writing to him these ten days past, and that if it were to a French person, it would be so much the better."

Your committee observe, that soon after a French direction to monsieur Maisonneuve was sent over to Kelly by Christopher Glascock, which Kelly made use of for some time, and the original letter in Kelly's hand stopt at the post-office is so directed. They likewise observe the reasons which Kelly says he had, not to make use of the old directions, appear evidently to have been, that he was questioned before the lords on the names of Howell and Quitwell, which were the names made use of for Glascock.

He concludes his letter to Crow, with desiring him to direct to him by the name of Wilkins at Will's coffee-house; and your committee observe, that not long after, a letter came signed, J. T. and so directed; which was stopt, and is in the same hand with the letter signed J. Talbot, seized at Mrs. Barnes's; which confirms Talbot to be Crow.

In this letter to Crow was enclosed one from Kelly to Dillon by the name of Dixwell; the substance of which has been partly set forth in that part of the Report which relates to the bishop of Rochester. In the letter, "He desires to be excused from meddling in business for some time; but says it does not proceed from any change of opinion, or resentment of the little concern that has been shewn him; but from a conviction, that without changing both their method and their people it will be impossible to make any thing of it."

Kelly adds in this letter: "Your correspondents at Will's and Burton's are gone, and desire you may write no more that way; and when you do me that favour, please to address under cover to Mr. David Wilkins at Will's coffee-house, Covent Garden, and not to Andrews, as I desired."

This passage confirms the list of directions to Will's and Burton's found in Kelly's pocket; and shews that the letters to Wilkins, as well as Andrews, were for Kelly, though, as is before observed, "He denied the having ever received any letter under a fictitious name."

On the 28th of June, James Talbot writes to Kelly, "Congratulating him on his enlargement and behaviour, and expressing his surprize, that he should at such a juncture have reason to complain of want of friends."

On the same day Glascock writes to Ireton under cover to Andrews; and as Andrews delivered these letters unopened to Kelly, this shews that Ireton is another name for Kelly, of which the matter of the letters furnishes abundant proof.

In this letter Glascock takes notice, that Kelly's letter to Chitwood came safe. This refers to Kelly's letter of the 18th to Dixwell, and shews Chitwood to be another name for Dillon.

"That what he had recommended in relation to the new book of accounts would be observed, and that Forrester had the same advice given to him and Ormond." Who Forrester is does not appear to the committee, but as he is mentioned here with the late duke of Ormond, he is probably the person who wrote the letters to Dunwille and Dodsworth above-mentioned.

Glascock then tells him, "That Ormond had expressed much concern for what had befallen Kelly. He afterwards desires the particulars of his case, and to know what is wanting for paying off the doctor's and apothecary's bills, acknowledges the receipt of a letter from Rogers, and enquires after Jemison."

On the 28th of June, Kelly writes to Talbot, "Of the neglect that had been shewn him, and the reasons that he had to decline any farther traffic with the merchants here; he says, if Talbot perceives no likelihood of a sudden change for the better, he must retire to some cheap part of the country, if Dillon allows of it; expresses his great obligations to Dillon, and his readiness to execute any private commands of his;" and adds, (what appears to your committee very remarkable) "if I were in a condition to bear the weight of public business, Dillon should never be at the trouble to employ another, but that he is heartily sorry Dillon himself has done it so long for ungrateful people on this side; says, he never intended to trouble his friends on this side on his own private account, but public ones of this nature are what he thinks they ought to take care of, since they are best able to do it, and expect the best returns for it."

Your committee observe from passages, that though Kelly would have it believed he only corresponded with persons in France on private affairs, relating to the stocks, yet he here owns in effect, that he had been trusted with affairs of a public nature, and that these transactions having brought on him the displeasure of the government, it was reasonable for him to hope for support from those in England, who expected the best returns from his and Dillon's joint labours.

Your committee farther observe, that this letter was directed to Crow, and yet in it was enclosed one from Ireland, relating to family affairs, directed to James Talbot, esq.

On the 4th of July, Glascock writes to Kelly, "That Dillon intended to have sent him a letter of credit by the post, drawn on Mr. Harrold,

but kept it back till he heard from him, for fear, by removal into the country, or by any other accident, it should be lost."

On the 11th of July, Glascock repeats the same, and his suspicion that the letters to Andrews had miscarried. Then acquaints Kelly with kind expressions that he had seen from Dr. Freeman and Mrs. Malcolm (the Pretender and his spouse) in relation to Hawksby's last operation in his late violent distemper.

Your committee observe from what follows in this letter, that, though in Plunkett's cypher Hawksby stands for king George, yet in the Pretender's cypher it stands for George without any addition, and appears for that reason to be made use of to denote George Kelly in this place. Be that as it will, it is evident from what follows, that Kelly is the person here meant.

The Pretender's words mentioned in this letter are as follows:

"Hawksby's steady and resolute behaviour in the first operation, answers the good opinion I have long had of him; I am fully persuaded, that all the surgeons will do hereafter shall not be able to sheer his temper, and I hope he will come off with patience and a short confinement, by which his health will become more perfect and satisfactory to his friends."

Glascock then adds, "Mrs. Malcolm (the Pretender's spouse) in her short way of expression says, I am truly glad that honest Hawksby is recovered, for I take him to be a very valuable man."

Then he says, "I know these compliments will be comfortable to a sick person from his friends, for which reason I trouble you with them, as a proof of my attention towards one I wish so well."

These last words shew, that this comfort was intended for Kelly, to support him under his trouble, which is disguised under the notion of sickness; and your committee think it unnecessary for them to make any observation on a passage, which shews so plainly for whose sake it was understood he had brought this trouble on himself.

Glascock next tells him, "That as he is upon regulating his new book of accounts, he should be glad to know whether Kelly and Jemison had those by them they and Glascock rectified together."

This shews that Kelly's journies into France were not wholly on private affairs, and confirms Neynoe's account of his having seen cyphers in Kelly's hands, and is again confirmed by the cypher found among Dennis Kelly's papers, which is in George Kelly's hand-writing.

Glascock then sends him the French direction he had desired.

On the 17th of July, Glascock writes again to Kelly, to let him know why the bill was not sent, and to desire a sure address. He likewise cautions Kelly not to draw any more on Digby, but on messieurs Chitwood and Dufresnay, at Mr. Hues, banker, Rue de la Monnoye. Your committee observe, that this was about the time that Mr. Crawford made the discovery above related about the name of Digby; and then for some time after, Kelly directs his letters for Dillon to Duplessis, till a new cypher, which he, Kelly, sent over afterwards came to be made use of.

On the 19th of July, Kelly writes to Glascock, that Mr. Andrews received the several letters from Glascock all together; which was occasioned by a mistake in directing them to King-street, instead of St James's; which agrees with Andrews's deposition above-mentioned.

He then "returns thanks for the letter of credit intended him, and says it will come safe either to Mr. Wilkins at Will's coffee-house, or to Mr. Andrews at the Dog and Duck." This, compared with Andrews's deposition, shews that the bill was for Kelly himself: which observation the committee think it proper to make, because, when he was examined before them in relation to the letters directed to Andrews, though nothing was said to him about the said bill, he immediately endeavoured to explain away that matter by the following prevarication.

He said, "He had been desired by one Mrs. Oxburgh in the city, daughter to him who was executed, to receive some letters for her from abroad; and that he did not know but he might employ one Andrews, or some other friend to take up such letters. That he had likewise received some money on a bill for the said Mrs. Oxburgh, of a little man, a banker in Lothbury, or somewhere behind the Exchange, and that he had endorsed the bill with his own hand."

Your committee observe, that this last circumstance makes it probable the bill was for himself, since his endorsement on a foreign bill (which is not usually made payable to the bearer) would not have entitled him to have received the money, nor have been a sufficient discharge, except the bill had been made payable to him.

They likewise observe, that Mr. Martin Harold, on whom the bill was drawn, whom Kelly avoided to name, does live behind the Exchange, though not in Lothbury; and in Glascock's letter of the 24th of July, Kelly is particularly directed to endorse the bill on Harold with his own name. Your committee submit it to the consideration of the House, whether it is not evident from these circumstances, that Kelly received the said money for his own use, as a reward for his sufferings, and an encouragement to persist in his obstinacy.

On the 23d of July Kelly writes to Talbot, "That this bill and the hopes of success in another particular, when the term is over, makes him a little easy.

"That as to what they had so often talked about, he did not know what to say to it, and that Nicholas Wogan's return gave him the less hopes of it; but that he heard the Beautiful Squire was certainly determined on something; but when, and in what manner, is what

he knows nothing of." Who is meant by the 'beautiful squire,' the committee cannot take upon them to determine; but they observe, this letter was writ the day after Layer's return by Epping from Norfolk, at which time he told Plunkett, "That the Pretender's friends would run down the ministry and king George in a little time, and bring the law-suit to bear on their own bottom, independent of the regent, or any body else;" as is related in Plunkett's letter of the same date with this of Kelly's.

On the 2nd of August, Kelly writes to Glascock, "That he had received the bill. That his letter of licence is not out till the end of October, and that his creditors threaten then to shew him no mercy: In the mean time he must hope the best, and wish that some good turn of fortune may enable him to do them justice."

He adds, "That he expected to have sent the state of their accounts before now, but that the gentleman who was to carry them, met with an accident the other night, which prevented him; therefore he cannot do it till he recovers, or some other opportunity offers:" Then sends a long account of Dennis Kelly's being taken up.

On the 6th of August he sends the same account to Dillon, and mentions the great terror the guards are under from informers; which intelligence your committee observe, was thought considerable enough to make an article in the Pretender's late declaration.

On the same day he sends Glascock an account of Sample's, Cotton's, and one Campbell's being taken up; "That there were reports of one sir Harry Goring's being taken, and of forces being sent for the lord North and Grey, lord Strafford, and other persons of quality; but that he finds there is no truth in them, and is told that the two last are come to town. He then desires to know Dillon's private thoughts from whence the ill report of his cousin's circumstances comes, which has occasioned this severity from his creditors, and says, he hopes soon to send the state of their accounts, which has hitherto been delayed for want of a proper hand."

On the 9th of August, Kelly writes to Glascock, "That Den is come to town, and behaves like a friend; but that Rep is still in the country, and so is Ho; and that the latter had earnestly desired Kelly to go to him for a few days, which he had hopes of doing; but intended to make but a short stay."

Your committee see reason to believe, that by 'Ho' is meant Hore; and they find an entry in Kelly's pocket-book of his having been at Mrs. H.'s and another entry in these word; "To enquire for Mr. —— at Mr. William Baysing's at Horn-dean," which is a house much frequented by sir Harry Goring, as appears by a deposition annexed to this Report.

Who are meant by Den and Rep your committee will not take upon them to determine, though they think this letter compared with that writ three days before, may lead to a discovery of the persons meant.

On the 13th of August, Kelly writes again to Glascock, "That he intends to visit H. who being at a pretty good distance in the country, he cannot return under four or five days." Which agrees with the circumstance of his going down as far as Horn-dean near Petersfield.

He afterwards adds a very remarkable paragraph in these words: "What would you advise poor Trotter to do, he is ready to take a voyage any where, and is, you know, an honest and fit person for that business; he has wrote very earnestly to me for my advice, which I told him I could not give till I heard from you."

Your committee think it their duty to observe to the House, that in the cypher found among Dennis Kelly's papers, in George Kelly's own hand-writing, Trotter is one of the fictitious names set over against the name of Carte, and that on the day this letter was writ, his majesty had issued his royal proclamation for apprehending the said Carte, against whom it is there set forth a warrant had been issued by one of the secretaries of state for treasonable practices, and that he had absconded and fled from justice.

Yet it appears from this letter, that George Kelly, far from discovering where the said Carte was concealed, was desirous to promote his escape, by getting him invited to undertake a voyage into foreign parts; and that notwithstanding the treasonable practices alledged against him, he here gives him the testimonial of an honest man, owns his having had communication with him by letter after the time of his escape, sollicited Glascock in his favour, and undertakes to aid and assist the said Carte with his advice, as soon as he should have an answer from Glascock.

On the 13th of August, Glascock writes again to Kelly, in relation to the bill on Harold, and mentions his expecting the gentleman soon that was to clear accounts.

He afterwards tells Kelly, "That Mrs. Musgrave had received advice from her father, that she is not to expect a farthing of the allowance due to her for the time past, or to come, which Allen had procured a seizure of, on account of her husband's debts and mismanagement."

Your committee, from comparing this letter with others, where Musgrave is mentioned, and from observing the date, see reason to believe, that this passage relates to the stopping a pension, which the committee are informed, by his majesty's singular bounty and indulgence, and upon application from the late lord Marr, and promise of services, was allowed to him; and they cannot reflect, without indignation and astonishment, on the black ingratitude of persons, who, while they were in a great measure subsisted by his majesty's unexampled liberality, were labouring, by the most wicked and unjustifiable practices, to dis-

possess him of his crown, and to destroy his sacred life.

On the 17th of August, Glascock writes again to Kelly, and among other things says, "He is contriving to get at Barker for a relief in favour of Farmer's (the Pretender's) children, in case their step-father should pretend to deprive them of their due." It appears by another letter, Barker means some considerable person in France; but what this passage particularly relates to, your committee cannot with certainty determine. However they have thought it their duty to lay this and other obscure passages before the House, that it may be seen how much it is in the power of persons now in custody to discover: and of what importance it is to the safety of his majesty's government, that such discovery should be required at their hands.

On the 20th of August, three days before the bishop of Rochester was taken into custody, Kelly writes to Glascock (the original of which letter is stopped, and sworn to be his hand-writing;) and says, "Your cousins Ireton and Wilkins are both gone into the country, and earnestly beg the favour of you not to write to them any more, for which you will soon know the reasons."

On the 30th of August he writes to Dillon; and after giving a very long and particular account of all the circumstances of the bishop's being taken up, examined, and committed to the Tower, he says, 'You are by this satisfied of the reasons of my late silence." Your committee observe, that these passages shew the connection which Kelly thought there was between the bishop and himself.

In the same letter of the 20th of August your committee observe another very remarkable circumstance; Kelly says, that he is going to the country that day, and he had said before, that he was going to Mr. Hore's.

In his pocket-book notice is taken, that sir H. G. went to F. on the 23rd.

On the 14th of September, Glascock writes him word, "That Mrs. Hore was under a fit of her old sickness at Rouen; but that it was not safe, for many good reasons, to have her transported to Paris, there being abundance of quacks going about, which cause much mischief."

From this time forwards Kelly makes use of a new cypher of names, and new directions to his letters.

On the 27th Kelly writes again, and says, "That since Mr. G. Sampson went, he has not heard a syllable from his correspondents in France, which has been a great detriment to several of their friends."

On the 9th of October, Glascock sends him word, "That all the letters he wrote by the post came safe; but that he had not yet seen the person who was to deliver him the particular instructions and address he was to make use of, that person being still detained in the country; but that he had taken measures to get from him the memorandum Kelly had given him."

On the 17th of October, Glascock sends Kelly word, "That the book of accounts sent by G. Saunders is at last come to hand, though the person that brought it is still in the country, so that they are now in a condition to settle accounts with Kelly." And from this time forward the correspondents in France make use of a new cypher of names, and new directions to their letters.

From all these circumstances, your committee see reason to believe, that Kelly sent over a new cypher, and a new list of directions to France by sir Harry Goring; in which they are the more confirmed, by observing, that this new cypher appears framed in such a manner, that the initial letters of the real names are always prefixed to the fictitious ones, which last are frequently varied, but the initial letter never. This will be more clearly understood by instancing in one of the names.

The person who carried over the cypher and list of directions from Kelly, is in some letters called G. Sampson; in others G. Stephenson, G. Saunders, and G. Sandford; and appears to be the same with Mrs. Hore, who was observed before to be probably sir Harry Goring.

Your committee farther observe, that all the names made use of in the new directions were entered by Kelly in the pocket-book that was taken upon him when he was last seized, with such marks and observations before them, as need no great explanation. Over-against the names of Bonnaville and Disode is writ the abbreviation Glas. and a letter signed Disode, having been stopped at the post-office, appears to be in the same hand as those signed Howell, Quitwell, Querry, &c. which were shewn above to have been writ by Glascock. Over-against Brisac and Du Puy, is writ Stur; and your committee find that letters came for Kelly, directed by these names, to Sturgis's coffee-house. Over-against Contade and Lunelle, is writ Slau; and your committee find, that letters thus directed, were left for him at Slaughter's coffee-house.

The committee are sensible, that their entering into so minute a detail, must be tedious to the House; but as the conspirators have been no less industrious than they are obstinate in concealing their treason, your committee have thought it their duty to trace it through every disguise as near as they could, and to lay before the House every circumstance which may any way tend to a discovery so necessary for the safety and quiet of these kingdoms, and yet so little to be hoped for from the present temper and disposition of the conspirators themselves.

The first of Kelly's letters, writ in this new cypher, is of the 10th of September, directed to Bonnaville (Glascock), under cover to Hues, banker at Paris.

In this he says, "I hope you have seen G. Stephenson before now," and mentions a trunk that he is soon to send to him; which circumstance shews he is the same person meant by G. Sandford in other letters.

He then takes notice of a young fellow that he had recommended, (which was observed before to be probably Neynoe) "and earnestly begs the goods he carries with him may be disposed of at any rate; and, if possible, without Mr. L. Craufurd's or his partners being concerned in the bargain." Your committee observe from Neynoe's informations, that he was to be recommended by Kelly to lord Landsdowne's family. They likewise observe from several other letters, that Dillon, upon the caution given him by Skinner from the bishop of Rochester, was grown very jealous of his former friends at Paris; from which circumstances, they think it probable, that by L. Craufurd is meant lord Landsdown.

He then adds, "Your cousin C. Saunders is well, and with a friend in the country, who will take particular care of her, till a better service can be got for her."

This, compared with what he says in his letter of the 13th of August, of Trotter's having writ to him for advice, and wanting to be employed in a voyage or other business, makes it probable, that by C. Saunders is meant Carte.

He then adds, "Your relations, N. Crone and S. Farrel, have made several bargains for ready money in the third subscription; and as the time allowed by parliament for non-prosecution will be out as soon as it sits, their creditors will then fall upon them and all their friends, and put them in jail, except you can send them some relief: and though your actions are at a very low price, however, I believe, they would be extremely pleased to have them sold at any rate, to enable them to pacify their creditors on this side, and to put them in a state of safety."

It has been observed, that the conspiracy is often treated of under the cant of 'stocks;' and whether this third subscription may not mean the third period of time fixed by the conspirators, and the relief desired be not some assistance from abroad, is submitted to the consideration of the House.

That this passage cannot be understood in the literal sense, is evident from its being said, that the time of non-prosecution expires at the sitting of the parliament; but your committee apprehend, that the meaning of this paragraph is fully explained by another in the same letter, in which Kelly says, "There is no prospect of the state prisoners getting out till next term, and if the Habeas Corpus act be suspended at the meeting of the parliament, they will remain during the government's pleasure, and perhaps have company enough." Who are meant by N. Crone and S. Farrel, is submitted to the conjecture of the House.

His next letter to Glascock, is of the 27th Sept. in which he complains, "That he has not heard a syllable from D. Gainer (Dillon probably), or G. Roberts (Glascock probably), since Mr. G. Sampson (Goring) went; which has been no small detriment to some of their friends." He adds, "The term being soon at hand, we shall be much at a loss how to manage without their advice; which G. Sampson positively promised to send a speedy account of.

"The situation of your friends stands much as it did, and nothing has happened of late in your family to ease their losses, or mend their condition."

He then gives a long account of the lord North and Grey's being seized at Portsmouth, and of his being to be brought to town that night; and concludes thus:

"I must now plainly tell you, that I am afraid your cousin N. Clifton is in a very bad way, and a person (whom he lately employed to manage some things for him, particularly to compound some S. Sea bargains) has not been true to him: for his creditors have actually put him in jail, and except you can contrive to send him some relief from what effects he put into your mississippi (for I don't find he has any other prospect), his confinement will prove fatal to him. You know his worth, and for heaven's sake don't forsake him."

This letter being mentioned to be writ on the day lord North and Grey was brought up in custody, your committee cannot but be led to conjecture, that by N. Clifton is meant the said lord; and that the person said to be employed by him, and suspected of being false to him, is either Lynch or Layer; and if this conjecture be admitted, it is not improbable that by N. Crone, in the former letter, may be meant the said lord North.

On the 20th October, Glascock writes to Kelly, "That D. Gainer (who in another part of the letter is called D. Gregory, and is probably Dillon) thinks very seriously of the commissions with which Kelly had charged him for his friends, and does not refuse to employ his whole credit in that affair; but that one single article had consumed the bill of exchange which N. Cleaton sent, and that there is not any other come that Dillon knows of."

Here N. Cleaton means evidently the same as N. Clifton in Kelly's letter; and it appears he had sent a bill of exchange to France, which was all consumed in one single article of expence. In former letters notice was taken of a bill of exchange sent over by Repney, and of 20,000*l.* raised by N.

In the same letter, Glascock takes notice of some goods sent by Contade and Lunelle for Kelly's use, which he desires Kelly to send for, and to acknowledge the receipt of them carefully.

It appears to your committee, that these goods were the Pretender's declarations, which came inclosed that post, or the next, under blank covers to Contade and Lunelle, at Slaughter's coffee-house, agreeable to the memorandum in Kelly's pocket-book.

In another part of the foregoing letter, it is said, that Mr. G. Sampson has sent over his project of accommodation, and waits the event of it, which it is probable relates to the same declaration.

Kelly, being examined by the committee in relation to the names in his pocket-book, said, "They were names of persons with whom he had transacted stock-affairs in France several years ago. He owned he had seen letters at Slaughter's and Sturgis's coffee-house, directed by some of those names, but that it might easily happen, that there might be persons in England of the same names with others in France; and that it was his misfortune letters should come directed by those names. He insisted, that his pocket-book, though taken upon him, was an old one that had lain by neglected these three years:" yet your committee observe the memorandums in it were of a late date, and contained a particular account of the time of his journeys to and from France, and of the days on which he and Dennis Kelly, and the bishop of Rochester, were taken into custody.

The House will observe, that this long and particular account of George Kelly is extracted out of such papers and informations, as were in the hands of the government, relating to him, supported by such explications as seem to the committee naturally to arise from comparing the several parts of them together; but that he himself upon his examination refused to make the least discovery that might give light to any part of this treasonable correspondence, though he plainly intimated he had it in his power to do it. And if, in some particulars, the committee should have fallen short of the true and genuine explanation of the names, or other facts, which may easily have happened in unfolding such variety of matter, so industriously wrapt up in the utmost obscurity; yet they conceive it will not lessen the credit of those facts in general relating to him, which are supported by unquestionable evidence, notwithstanding his denying of them, and his prevaricating so grossly with the committee.

Your committee will now proceed to lay before you such particulars as they have collected from the papers referred to them relating to Dennis Kelly, esq. who appears to them, from several passages in the intercepted letters, to have acted in concert with the other Kelly, and behaved himself with the same obstinacy on his examination before them.

Your committee see reason to believe, that the several fictitious names of Kirkton, Killegrew, Sandford, St. George, and Hubberts, are made use of in the intercepted letters to express one and the same person: and as this person is frequently spoken of as living at the Cockpit, as being himself ill of a fever and ague part of last summer, as having a daughter who was troubled with returns of spitting blood at particular times there mentioned, and as being to set out with his family for France by Dieppe, the latter end of July; these several circumstances being confirmed to your committee by the written examinations of Mr. Dennis Kelly's servants to have been true of him, and being in the opinion of the committee applicable to no one else, they see reason to conclude, that what is affirmed in the intercepted correspondence, of the person designed by the names above-mentioned, is affirmed of him.

Your committee have likewise been informed, that enquiry having been made at the British coffee-house, who took up letters directed thither by the name of Sandford, it was found that one Mr. Kelly, who frequented that house, took them up. And a letter from France so directed having been copied at the post-office, and then delivered out, the original of the said letter, signed M. Digby, was found in Dennis Kelly's pocket, when he was taken up, as appears by the affidavit of the messenger who seized him.

In this letter Digby sends his service to his cousin Ireton, which has been shewn above to be one of the names belonging to George Kelly; and also mentions Here, who has been already explained to be probably sir Harry Goring.

Your committee observe, that the said letter was writ in the same hand with another signed J. Gerrard, which was likewise found among Dennis Kelly's papers, and has been observed above to be probably the name made use of by sir John D'Obryan, whom George Kelly declared to be secretary to Dillon.

They farther observe, that both these letters, signed Gerrard, and Digby, were in the same hand with others found in his custody relating to Dillon's private affairs; which confirms Digby to be Dillon, and Gerrard to be one whose hand Dillon makes use for his dispatches.

Another fragment of a letter was found among his papers mentioning the names of Ireton and Here; which is in the same hand with the letters to Plunkett, signed Dixwell and Howell, and is therefore probably the writing of Christopher Glascock, George Kelly's correspondent.

Some other papers were also found in his custody, mentioning others of the fictitious names used in George Kelly's letters, as also a long list of names, with fictitious names over against them, and a cypher of figures, which appear to be George Kelly's hand-writing, and are sworn, by the clerks of the post-office, to be the same hand in which the letters signed Johnson, Hatfield, &c. were writ. It has already been observed, that this cypher of figures is found to be a supplement to the cypher in which the letters of the late duke of Ormond, and the bishop of Rochester were writ; and that the said cypher last mentioned is made use of in one of the intercepted letters from Dillon to Dennis Kelly.

There was also found among his papers, an exact list of the quartering of his majesty's forces a little before the time of the elections, and a scheme for erecting by-boats between London and Boulogne, which seems referred to in the letters between George Kelly and Gordon of Boulogne.

There was also taken among his papers a fragment of a very treasonable letter, signed F. M. which your committee conjecture was from one Francis Macnamarra, a person con-

cerned in the former rebellion, there being another letter among his papers, with the name at length, in the same hand.

Your committee have laid together these several circumstances, that it may appear Dennis Kelly was concerned in the treasonable correspondence, which is confirmed by Mr. Craufurd's letter from Paris, 19-30 of May, in which he says, "There is one captain Kelly, who frequents the Cocoa-tree and Will's coffee-house, who is much in the confidence of Dillon and lord Lansdown; he was here some months ago, and is at present very active in England."

Your committee find, that he was abroad for several months the latter end of the year 1721, and that some of the letters sent to him by fictitious names from France, were directed to Will's coffee-house and the Cocoa-tree.

The matters which they find him principally concerned in by the intercepted letters, are the remittance of the bill of exchange sent over from the person called Repney, the receipt of which is acknowledged in several letters to him, his being present at a consultation with the persons called Rep. Ho. and Den. and his being to carry over to France their final answer, together with a new cypher, list of directions, and other verbal instructions, from George Kelly, for Dillon, Glascock and Talbot.

As George Kelly's correspondence was closely connected with that of the bishop of Rochester, Thomas Carte, and Dennis Kelly, and as he appears to have been privy to Plunkett's; so your committee see reason to believe, that he was not a stranger to that of Sample, who appears to be mentioned in a letter from Gerrard to Kelly.

Your committee find, that John Sample, being examined before the secretaries of state, and two of your committee, owned, that Francis son of the lord Sempill, commonly so called, had been in England that summer, and returned to France about three weeks before his examination, which was taken on the 4th of August last.

That during his stay in England, he (John Sample) was twice in company with him, and that two letters found in his trunk were received by him from the said Francis Sempill before his coming to England.

In the first of these letters, dated June 2-13, 1722, Fr. Sempill tells him, "That they are daily confirmed Mrs. Hews's distemper is but imaginary or counterfeit." By Mrs. Hews, he said, was meant the king, and by his distemper the late disturbances.

Fr. Sempill then tells him, "That this has put a stop to Mr. Standwell's proceedings (Standwell he owned to mean the Pretender); but that this cannot disconcert Standwell's measures, nor even delay any thing above a few weeks.

"That perhaps he may soon produce himself to their cost, but it is not yet full time to give him (Sample) hopes of that kind." He adds, "That they have not yet heard from Mr. Houlder," whom Sample explained to be the late duke of Ormond.

Your committee observe, that this agrees with the accounts given in the former parts of their Report, of the attempts that were to have been made in England about the beginning of May, which were prevented, though not entirely discontinued, by the discoveries made here, and by the encampment.

Sample being shewn the copies of several letters, taken at the post-office, directed to Mr. Sempill at Paris, and enclosing others, owned, as appears by his examination, the writing of them all, and gave explications of the names made use of in them. One of these letters is to Standwell, whom he owned to mean the Pretender, and another is mentioned to be for Glascow's master which is probably general Dillon. He likewise owned his having writ to the late duke of Ormond, and to Kennedy his secretary; and while he was in custody of the messenger, he begun to put down in writing a confession of his crimes, which was found in his room after his escape. But though some of his letters appeared dictated by him to other persons, your committee do not find he would discover who those persons were.

Your committee will next proceed to lay before you the substance of the several papers and examinations referred to them, relating to Mrs. Spelman, alias Yallop; in doing which, they find themselves indispensably obliged to mention a person of high rank and distinction, Thomas duke of Norfolk, among others concerned in the treasonable correspondence conveyed through the hands of the said Mrs. Spelman.

It appears to your committee, that Mrs. Spelman being examined on the 19th of October, concerning several letters from abroad, directed to her by the name of Mr. or Mrs. Burton, has declared upon oath, "That Mr. George Jernegan, (who as your committee are informed, is a Roman Catholic, and appears to have been long employed by the Pretender) being in England about six months before her examination, did, upon his going for France, leave orders with the said Mrs. Spelman to send to the duke of Norfolk such letters as she should receive from him, Jernegan, directed to Mrs. Jones; and to Mr. Harvey of Combe, such as she should receive from him, directed to Mrs. Williams, in Newgate-street, Norwich; and to Mr. William Moor (who lives, or did live in Brownlow-street) such as she should receive from him, directed to Mr. Frampton: and that it was agreed between her and Jernegan, that he should direct to her by the name of Burton, when he did not do it by her own name.

"That she did accordingly send (as had been agreed between them) the letters that came to her with the directions above-mentioned, having first enclosed them under new covers, which she herself directed; that she sent them by common porters, who always brought her back an account of their having delivered them, or

of the person's not being at home; that particularly one to the duke of Norfolk was brought back again by the porter, his grace not being in town, which letter she kept till he came to town, and then sent it to him. That she once received a message from the duke of Norfolk by Mr. Edward Jernegan; that his grace could not answer a letter she had conveyed to him from George Jernegan, because he, the duke of Norfolk, had not the key of the cypher, it being in his brother's hands; she likewise owned her receiving several cyphers and keys of cyphers from George Jernegan; which she burnt between the time of her first and second examination."

Copies of these cyphers having been taken at the post-office, it appears that one of them was marked, A Key and Cypher, with Mr. Farmer and Jerry; and another, D, O, and J; the first of which is probably a cypher between the Pretender and Jernegan, and the latter between him and the late duke of Ormond.

It farther appears to your committee, that Edward Jernegan being examined in relation to the message from the duke of Norfolk above mentioned, has deposed upon oath, "That about a fortnight before the duke went to the Bath, being informed that his grace had enquired for some of their family, he, Jernegan, went to wait on him, and his grace told him, that he had received a letter from George Jernegan, who was then abroad, but that he could not answer it because his grace's brother had the key of the cypher, in which it was written; and that he, Jernegan, delivered this message to Mrs. Spelman.

The first letter directed to Mrs. Jones, (the duke of Norfolk) of which a copy was taken, is dated, Cambray, 12th of July, 1722, and is partly in cypher, but has been decyphered in the manner following:

"Sir; various considerations, which obliged me to submit, deprived me till now the honour of writing to you; therefore I flatter myself, you incline to favour me with opinion, that my zeal and attention are above falling into any negligence, where your solicitude or private satisfaction is concerned. You have been in some manner a witness of the late turn in affairs, and undoubtedly know so much of them, that I fear it will prove superfluous to trouble you with the particulars which I have: after several meetings with some of our friends at Paris, ... was of opinion, that the whole should be communicated to the regent; which being agreed to, that lord was deputed to wait on him: they met, and parted in appearance the best friends in the world, notwithstanding immediately, by the regent's orders, the secret was discovered to king George. How is it possible to arm one's self with sufficient prudence against such a conduct? These being our private concerns, I leave them, to divert you with the public news: the overture of the congress seems now in the way to be deferred to the K. of Fr. majority, who, since his removal to Versailles, is in a manner solely in the hands of the regent. His coronation remains still fixed to the 15th of October; so, in all appearance, this year produces no disturbance to the present peace of Europe. The emperor grows daily more powerful in Italy, by the pope's falling into that interest; he has lately seized the fortress of Massa in Florence, and promises the investiture thereof, with that of Parma, to the prince of Baviere, upon his marriage with the princess Josephina. Spain will be under great difficulties to find means to support their claim to these provinces, especially at a time that France seems negligent of every thing that concerns them. There is no appearance likewise that the affairs in the North produce any thing material this season: the pacific temper of the K. of Prussia secures every thing on that side, and has probably prevented the disturbance threatened in those parts. Thus at present are the affairs of Europe.

"I did not fail to repeat my usual solicitations in favour of your brother, and to add what in justice I thought you merited: this I did upon the first occasion, after my coming over; to which, from the king, I have this answer:

"*June the 15th.*

"'Nobody has a better opinion than I have of the great person you mention, nor does his character more justice; I shall be always desirous to do what is in my power to convince him of my regard for his brother, who now is in the country with me; but I fear it will not be time to move in the particular you mention of some years yet, which will be the case of all others who pretend to the same right as I do.'

"Thus far was his. There is a pleasure to see with what generous virtue he repays all who consider his misfortunes.

"I presume to mention one thing more, being moved to it out of a pure consideration to the credit it will give to your name. Dr. Witham finds himself under the necessity of building the old house, being ready to fall; and next spring they begin, but upon so small a fund as will never finish the work, as it ought to be; the consequence of which must necessarily oblige them to beg the assistance of their friends. I should be sorry upon this occasion, that any other person should distinguish himself so, by a donation, as to merit his arms to be placed in the front, where I could wish to see your own. I have not spoke one word of this to any person in the house, thinking it would look more generous in you, if disposed to take the credit of laying the first stone, to move and offer it yourself. As to other matters, if I can be serviceable in these parts, either in your particular, or to the interest of the party, you know me faithfully devoted to both. I have obtained leave to return by the end of the summer, finding it inconvenient to my private situation to remain longer abroad: I hope then to present you with fresh proofs with what zeal

and respect I have the honour to be, Sir, your most obedient and most humble servant.

"Be pleased to address to me, à monsieur Hooker, under cover à monsieur Pigault, Banquier, à Calais."

Your committee observe from this letter, that Jernegan supposes the duke of Norfolk already acquainted with a design, on which application had been made to the regent, and with the causes of its miscarriage; that, however, in order to shew his zeal and attention in any thing, where he thought the duke's solicitude concerned, he sends him an account of what had happened to their common friends at Paris, and of the secret's being communicated to king George by the regent's order; and then laments the impossibility of arming themselves with sufficient prudence against such a conduct, which, supposing it to have been such as they represent, yet could not possibly have appeared blameable to any but the enemies of our present happy establishment.

He then shews from the situation of affairs in Europe, there is but little prospect of any rupture, which may be favourable or advantageous to their designs.

He afterwards acquaints the duke, that he had repeated his solicitations to the Pretender in favour of his grace's brother, and had also added what in justice he thought his grace himself merited; to which he received an answer from the Pretender (whom he styles the king,) acknowledging his great opinion of the duke, and the justice he does his character, and his readiness to convince his grace of his regard, by any kindness he can shew his brother.

And the inference, which Jernegan makes from the regard expressed towards the duke in this letter of the Pretender's, is, that there is a pleasure to see with what generous virtue he (the Pretender) repays all those who consider his misfortunes.

He concludes with telling the duke, that if he can be serviceable in those parts, either in his grace's own particular, or to the interest of the party, his grace knows him faithfully devoted to both.

On the 12th 23rd of August, Jernegan writes a second letter to the duke, as follows:

"Sir; the vicissitude in our affairs being a perpetual ebbing and flowing, it is extremely difficult to assure any thing with certainty: In my last of the 12th I mentioned how things had happened; and although the fact was true, yet the consequence did not answer what we apprehended: It was a politic necessity which urged and demanded that conduct, and it appears now to have succeeded so well, that every hand is at work, as before, to draw things to a right conclusion; brief's, we are flattered that the regent is cordially in our interest, and disposes every thing to undertake the work, which, according to some accounts, will be put in execution within two months; those who are serious and make due reflection on these matters, know how far they may be useful to the cause, and with timely and prudent precautions may dispose their friends to act a lively part; whilst they themselves keep retired, till the success one way or the other determines what is necessary to be done.

"I have opportunity, by being in these parts, of picking up several good officers, and with a little trouble as many as would complete an entire regiment, into which any gentleman might enter himself, and do his duty with honour. This is what I thought fit to propose on this occasion, and should be glad to know, if solely upon your own bottom this may be thought on. I shall take all necessary precaution, and shall first know certainly what there is to depend upon. Your opinion on these matters, with the assistance of your advice, will lay a most sensible obligation on him, who entirely devotes himself, Sir, your most obedient and most humble servant.

"Let the conveyer of these furnish you with my immediate address."

Your committee observe, that in this letter, Jernegan does, with an air of great satisfaction, try to lessen the apprehensions and discouragements, which he supposed his former account of the regent's having betrayed the secret might have raised in his grace, and says that every hand is now at work, as before, to draw things to a right conclusion, without explaining what that former work, or the right conclusion hoped for, is; which particulars, it appears, he thought so well known to the duke as not to need the least explanation.

Then after telling his grace, 'we are flattered the regent is cordially in our interest, and is disposing every thing to undertake the work within two months time,' he intimates, that from this hint, one of his grace's seriousness and reflection might be useful to the cause, by disposing his friends (who may justly be understood to be the Roman Catholics) to act a lively part, while he himself lies retired, waiting till the event should determine what part it was proper for him to take.

He then makes the offer to his grace of raising an entire regiment of officers in Flanders, into which any gentleman might enter himself, and do his duty with honour: and desires to know, whether on his grace's own bottom such a thing might be thought of.

This treasonable offer, from an humble servant of his grace's, shews that Jernegan was at least persuaded it would not be ill received: which could only proceed from a thorough assurance of the duke's inclinations to the Pretender's cause, and of his intentions to support it with men and money, whenever a probability of success should make it safe and proper for him to espouse it openly.

Your committee farther observe, that this letter was writ about the same time that Plunkett was so busy in pressing Dillon to solicit the regent's assistance; and that the term for putting the design in execution, which is mentioned in Jernegan's letter to be within two

months from the beginning of August, has an evident relation to the third period pitched upon by the conspirators, which, as has been observed before, was the breaking up of the camp. And it appears to your committee, by several concurrent advices from France, Spain, and Italy, during the months of July and August, that the design, which had been suspended upon the first discovery of the plot, was again resumed, and preparations made for the Pretender's leaving Italy about the beginning of September; for which purpose the ship Revolution (since taken) set sail for Italy the latter end of August, having on board near 200 men and a great number of officers.

Mention is made, in Jernegan's letters to Mrs. Spelman, of a great number of letters written to, and received from Mr. Harvey of Combe, by the name of Mrs. Williams; and in one of his letters to Mr. Harvey, he says, "The regent plays a game apart, and confides in none but Britain, and has sacrificed us to make a firm friend of king George. The late disappointment in our affairs has given a surprising power to the court of France: they silence all other princes in regard to us; none now dare look that way, or undertake the least trifling service in our favour."

On the 20th of July, Mr. Harvey sent an answer to this letter, the original of which is stopped, and is sworn by Mrs. Spelman to be his hand-writing; but it contains such an odd heap of low and virulent scandal, that the committee do not think proper to trouble the House with any extract of it, but have annexed it entire to their Report.

Your committee have already taken notice, that the treasonable correspondence above set forth was not confined to England only, but was carried on in Scotland, under the same cant expressions of wine, trade, goods, &c. And it appears that the Pretender's agents were equally busy in disposing matters for an insurrection in that part of the kingdom, at the same periods of time as were fixed on in England.

They find that the government has received information upon oath from one Lodovick Anderson, "That on the 28th of January, 1721, brigadier Mackintosh was seen by him (Anderson) at the house of sir John Mackenzie of Coul, and told Anderson that the Pretender designed to have on the crown of Scotland before Midsummer, and that he was to be assisted from France, Spain, and Muscovy; that general Gordon and captain Tullock were to land at the Loach Elch with arms for this purpose."

That Mackintosh was then in Britain, agrees with Pancier's deposition.

Anderson farther deposed, "That on the 15th of February he met the lord George Murray at a place not far from the earl of Kintore's, who confirmed to him what Mackintosh had said, with several other particulars; that two days after, he met Mr. James Keith, brother to the earl Marishall, who after having told him that there would be a descent in favour of the Pretender, named to him several persons (specified in his deposition) that were come over to get matters in a readiness."

This, your committee observes, answers to the first period of time for beginning an insurrection, with the help of foreign forces, during the time of the elections.

About the beginning of May a letter was intercepted, directed to Mr. Peter Smyth at Boulogne, and inclosing another to De Martin: which letters, as your committee are informed, are in the hand-writing of Mr. Cochran. Who is meant by De Martin, does not appear.

In this letter Cochran says, "Our customers, on this side the water, are as fond of taking our goods as you are of sending them; but I am afraid if they are not sent soon the market will be forestalled, for our enemies begin to be upon their guard. He adds, that their friends in England are willing to send money to pay for them per advance, and that they in Scotland are not backward, but hope, in a few days to remit as much money as will be sufficient for their country. He then desires to know how soon they may expect their wines on this side the water, that they may put themselves in a sufficient posture for receiving them."

Your committee likewise find that Christopher Glascock, Dillon's agent, carried on correspondences to the same effect, with one who went by the name of James Johnston, at Edinburgh; and that George Kelly corresponded with the same James Johnston, and owned to the lords at his examination, his having sent the said Johnston a paper from Glascock, which he pretended related only to the Mississippi.

Letters were likewise intercepted going from Edinburgh, directed to Collins at Mr. Waters's, banker at Paris; which Collins appears, by Kelly's cypher, to be Colin Campbell of Glenderoule.

In one of these letters to Collins, mention is made of a person of great consequence and distinction, lately regained to the Pretender's party, who insisted on a sight of the contract of copartnery, which Collins is desired to send over by the first sure hand; and Collins, in his answer signed R. Broun, promises it shall be sent over.

Your committee observe, that this particular agrees with Fairfax's deposition upon oath, that Layer told him the people of England were backward, but that those of Scotland had already entered into an association.

In the same letter to Collins it is said, That the person of consequence who had insisted on a sight of the contract of copartnery, desired an order from Mr. Malcolm for raising one or two battalions; but was told those orders might come time enough by the hands of those who happened to come first to open the commerce; which shews of what nature that commerce was.

In the same letter application is made to Mr. Malcolm for a patent for knight baronet; both which circumstances confirm Malcolm to be the Pretender.

Your committee observe, that these letters,

and some others, which appear to have been intercepted about the month of May, and are annexed to this Report, fall in with the second period of time fixed by the conspirators in England.

And on the 18th of August, O. S. Mr. Stanhope writes word from Madrid, that he had received intelligence, that the Scotch had engaged to bring 22,000 men into the field in ten days time, in case the late duke of Ormond would come over with arms to head them, and that they daily sent most pressing messages to Ormond on that subject; which shews that the design was reassumed a third time in Scotland, as it was in England.

Your committee farther observe, that agreeably to what was promised in Mr. Cochran's letter of the 28th of April, Mr. William Erskine did on the 3d of May, remit 2,000*l.* sterling to Mr. Gerrard, Dillon's secretary at Paris, and owned his so doing on his examination before the lord justice clerk; but refused to discover who Gerrard was, or from whom and for whose use the said sum was remitted.

When he was taken into custody, a letter was seized in his pocket, which, as your committee is informed, is all in the late lord Marr's own hand-writing, dated Paris, February the 9th, 1722, in the following words:

"*Paris, Feb.* 9, 1722.

"I have, William, yours of the 7th, for which I am obliged to you, and take all you say, as I ought, from the good heart from whence I know it comes, though at the same time you put a greater value on your friend than he deserves: But be that as it will, I am fully persuaded, as you may be, that he will never fail an occasion for what you mean, nor neglect endeavouring to bring it about, where he sees it can be of advantage to his country; and his friends and countrymen may depend on it, when they see him engaged again, that the retrieving of it from the low condition it is now in, and otherways ever like to be, is the chief motive that induces him; and he hopes, in that way he will not be without the assistance of all who wish the same thing, and the more, that he will take all the care he can not to expose them for serving that of others, if at the same time he be not pretty sure of its doing effectual service to their own, and putting it on a better foot than it has been these hundred years past. If he looked but to his own private interest, he could perhaps find a way, which could conduce more to it: But he hopes by his former actions, it appears that he never put that in competition with what he thought was the interest of his country; though in which he owns he was once mistaken, as many others may have been; but as he never scrupled owning his fault, since he found it by experience to be one, so he has ever since endeavoured to make amends, and will as long as he lives.

"Things are in such a situation at present over all Europe, that there appears little, if any opportunity, of doing what is to be wished upon that account; but things of this kind are very uncertain, and an opportunity may come, or be brought about, when least expected; and you may believe it will not be neglected when it does; nor will any endeavours be wanting to bring it to that pass. Hush, though, must be the word, and friends must not take amiss their not being acquainted previously to the execution, in which it is to be hoped they will not fail.

"You see I make no scruple in writing freely to you, but you know the consequence of this coming into wrong hands, and those it is fit and of use to be told to, you know too: So I leave it to your own discretion, of which you have given me many proofs. I have been much out of use of writing to H. S. for some years past, and I have not yet got a return of one I wrote him last summer; but I shall write to him of what you mention in yours.

"As to M——y, I care not to say more about him; and were it not that I think it for the good of a certain person and cause, I should not even wish to have all the truth told of him since his being abroad. I cannot answer for what handles may be given him for his justification; but let honest men, who wish right, tell the truth, where they know it, and that it is necessary, and shame the devil.

"I wish you a good journey and good luck with all my heart, and that we may soon have an opportunity to meet merrily, and be of use to our country. My compliments to my friends, and I hope we shall never have cause to be ashamed of other.

"I shall long impatiently to hear from you after your getting to London and Edinburgh; and pray do not fail writing after your coming to both places, and have seen people.

"Send me your address, and you may be sure of hearing from me when it can be of any use. Pleasure it would be always to me, but that must yield sometimes to circumstances.

"My family salute you, and wish you all happiness; as I do, who am sincerely and affectionately yours, &c. Adieu.

"I wish you may have something agreeable to tell me of your brother and uncle when you have seen them, and remember me kindly to your father-in-law. Sure we must all wish the same way to our country.

"What is become of our cousin Will, who I hear is still where you have been for some time?"

Your committee likewise find evident footsteps of this treasonable correspondence from Ireland; but having already shewn sufficiently the extensiveness of the conspiracy, they forbear to tire the House with any further particulars.

Your committee have now gone through the several matters that appeared to them from the examinations of the persons or papers referred to them; and they are in hopes, that in reporting every circumstance, that seemed material, they have strictly complied with the intentions of the House in appointing them.

If the frequent repetitions of the same

matter have swelled the Report into too great a length, they are persuaded the House will excuse it, since it was in all the places where they have done it; necessary to explain the passages related, or else to shew the connection of the treasons, as well as the co-operation of the conspirators, in their wicked design of dethroning his most sacred majesty, and overturning our present happy establishment in church and state.

On March 8, the House having proceeded to take the said Report into consideration,

Resolved, That, upon consideration of the Report, and the several papers and examinations relating to the conspiracy, it appears to this House, that a detestable and horrid conspiracy has been formed, and carried on, by persons of figure and distinction, and their agents and instruments, in conjunction with traitors abroad, for invading these kingdoms with foreign forces; for raising insurrections, and a rebellion, at home; for seizing the Tower and city of London; for laying violent hands upon the person of his most sacred majesty, and the prince of Wales; in order to subvert our present happy establishment in church and state, by placing a Popish Pretender upon the throne.

Resolved, That it appears to this House, that Christopher Layer, in his several examinations before the lords of the council, and the committee of this House, has grossly prevaricated; suppressed the truth; contradicted himself; and endeavoured, as far as in him lies, to disguise and conceal the said horrid and detestable conspiracy.

Resolved, That it appears to this House, that John Plunket has been a principal agent and instrument in the said horrid and detestable conspiracy; and has carried on several treasonable correspondences, to procure a foreign force to invade these kingdoms; to raise insurrections, and a rebellion, at home; and was engaged with others, in the villainous and execrable design of laying violent hands upon his majesty's most sacred person.

And thereupon a Bill to inflict certain pains and penalties upon the said John Plunket was upon a division ordered in by a majority of 289 against 130.

On Monday March the 11th, the House resumed the adjourned consideration of the Report from the committee appointed to examine Christopher Layer, and others; and to whom the several papers and examinations relating to the conspiracy mentioned in his majesty's speech, were referred.

Resolved, That, upon consideration of the said Report, and the several papers and examinations relating to the conspiracy, it appears to this House, that George Kelly, alias Johnson, has been a principal agent and instrument in the said horrid and detestable conspiracy; and has carried on several treasonable correspondences to raise insurrections, and a rebellion, at home; and to procure a foreign force to invade these kingdoms from abroad.

And thereupon a Bill to inflict certain pains and penalties upon George Kelly, alias Johnson; was ordered in by a majority of 280, against 111.

Resolved, by a majority of 285 against 154, That it appears to this House, that Francis lord bishop of Rochester was principally concerned in forming, directing, and carrying on, the said wicked and detestable conspiracy for invading these kingdoms with a foreign force; and for raising insurrections, and a rebellion, at home, in order to subvert our present happy establishment in church and state, by placing a Popish Pretender upon the throne.

Then after a motion to adjourn had been negatived by 260 against 126, a Bill was ordered in to inflict certain pains and penalties upon Francis lord bishop of Rochester.

On the 14th the House resolved, That the Report be communicated to the Lords, at a conference.

Resolved, That an humble address be presented to his majesty, that he will be graciously pleased to give leave, that the papers and examinations, which have been laid before this House, relating to the said conspiracy, may be communicated to the Lords.

Resolved, *nem. con.* That an humble address be presented to his majesty, expressing the indignation of this House against the horrid and detestable conspiracy which has been carried on against his majesty's sacred person; and to congratulate his majesty, on the happy discovery of it; and to assure his majesty, that this House will proceed, with the utmost vigour, to bring those to justice, who have been concerned in these unnatural designs against their country; and will effectually support his majesty's government; and will maintain, with all that is dear or valuable to them, the present happy establishment.

On the next day Mr. Comptroller reported to the House, that their address, of yesterday, having been presented to his majesty, that his majesty would be graciously pleased to give leave, that the letters and papers, which have been laid before this House, relating to the conspiracy, might be communicated to the Lords; his majesty has been pleased to give leave, that the said letters and papers may be communicated to the Lords.

Ordered, That the original papers, letters, and examinations, referred to in the Report from the committee, who were appointed to examine Christopher Layer, and others, in relation to the conspiracy mentioned in his majesty's speech, be delivered to the Lords, at the same time the said Report is communicated to their lordships: and that the Lords be acquainted, that this House do desire, that the said original papers, letters, and examinations may be returned to them, from time to time as shall be found necessary for the proceedings of this House.

And a committee having been appointed to consider and prepare matters to be offered to the Lords, at a conference:

Mr. Pulteney reported from the said com-

mittee, That they had prepared matter to be offered to the Lords, at a conference; which they had directed him to report to the House; and he read the same in his place; and afterwards delivered it in at the clerk's table: where the same was read; and is as follows; viz.

"The Commons, upon consideration of a Report from a committee of their own members, appointed to examine Christopher Layer, and others; as also, several original papers and letters, upon their humble application to his majesty, laid before them; being entirely satisfied, that a detestable and horrid conspiracy has been formed, and carried on, by persons of figure and distinction, for deposing his majesty, and placing a Popish Pretender on the throne; and being fully convinced, that several treasonable correspondences have been entered into by the said traitors, for soliciting a foreign force, to invade these kingdoms; and that endeavours have, at the same time, been used by them, for raising insurrections, and inciting a rebellion, at home; and the Commons, finding, with horror and astonishment, that some of the conspirators had arrived to such a height of wickedness, as to engage in a villainous and execrable design of laying violent hands on his majesty's most sacred person, are thoroughly sensible, that nothing can so effectually contribute to the safety of his majesty, and the preservation of our present happy establishment in church and state, as a perfect unanimity between the two Houses of Parliament; and have therefore desired this conference, to communicate the said Report to your lordships, together with the original papers and examinations referred to therein: and, as it may be necessary to the Commons, in their farther proceedings, to have recourse, from time to time, to the said original papers and examinations, they do desire, that, upon application to be made to your lordships, the same may be returned to them.

"The Commons do not doubt, but that the same zeal which actuates them, will likewise animate your lordships, in the vigorous prosecution of these wicked conspirators, till they are brought to exemplary justice, and until the united resentments of both Houses of Parliament shall convince the whole world of the danger there is for the most subtle traitors to attempt the subversion of this government; or to endeavour to deprive a free and happy people of the blessing of his majesty's reign, and the succession of his royal family, upon which their religion, laws, and liberties entirely depend."

Resolved, That the House doth agree with the committee, that the same is proper to be offered to the Lords, at a conference.

Ordered, That a conference be desired with the Lords, about matters of great importance, relating to the safety of his majesty's person, and the preservation of our present happy establishment in church and state.

The Lords having agreed to such conference,

Ordered, That Mr. Speaker do deliver to the members appointed to manage the conference, the trunk, containing the original papers, letters, and examinations, referred to in the Report: and that the said managers do leave the said papers, letters, and examinations, with the Lords.

And accordingly the said Report was communicated to the Lords, and the same, together with the said original papers, letters, and examinations, was left with their lordships.

On the same day, at the desire of the Lords, another conference between the Houses was held, wherein the Commons were informed, That the Lords had desired this conference to acquaint the Commons, that their lordships are taking into their consideration the Report, and the several original papers and examinations, delivered to them by the Commons, at a conference, in such manner as the nature and importance thereof requires: but, as the Commons have intimated at the said conference, that it may be necessary for them, in their further proceedings, to have recourse, from time to time, to the said original papers and examinations; and thereupon desired, that, upon application to the Lords, the same may be returned; the Lords, being desirous, at all times, to keep up a good correspondence with the House of Commons; and being satisfied, that it can never be more necessary, than at this juncture; have taken this first opportunity to acquaint the Commons, that they will return all or any of the said original papers and examinations, from time to time, as shall be desired by the Commons.

On March 19th, the Attorney General presented the Bill against John Plunkett, and the Solicitor General that against George Kelly alias Johnson: both Bills were read a first time, and ordered to be read a second time, the former on the 28th of the same month, and the latter on the 1st of April: It was also ordered, that copies of the Bills should be forthwith sent to Plunkett and Kelly alias Johnson, respectively, that those persons should be allowed pen, ink, and paper, and that the Attorney and Solicitor Generals should take care that the evidence against them respectively should be ready to be produced to the House on the days appointed for such second reading.

On March 22nd, Mr. Young presented the Bill against the bishop of Rochester, which was read a first time, and ordered to be read a second time on the fourth of April; and such other orders were made as had been made in the former cases.

On March 23rd a petition of George Kelly, clerk, prisoner in the Tower of London, was presented to the House, and read; setting forth, That a Bill is brought into the House for inflicting certain pains and penalties upon the petitioner; by which he may be very much affected, in case the same should pass into a law: and praying, that he may be heard by himself, and counsel, against the said Bill, before the same pass into a law; and that the

House will assign sir Constantine Phipps and Mr. serjeant Darnell for his counsel, and Mr. Hugh Watson for his solicitor; and that they may have free access to him, to receive his instructions in private; and that he may have the summons of the House for such witnesses as he shall think necessary.

And the House made orders accordingly, except as to the summons for witnesses.

On the 25th, Mr. Speaker acquainted the House, that he had this morning received a letter from the lord bishop of Rochester, dated Tower, March 23, 1722, that, his lordship having received a copy of a Bill for inflicting certain pains and penalties upon him for supposed crimes, of which he is innocent, he hoped he should be allowed to have sir Constantine Phipps, and William Wynne, esq. for his counsel; and Mr. Joseph Taylor and Mr. William Morrice for his solicitors, to assist him, in order to the making his defence; and that they may have free access to him to receive his instructions, and give him their advice, in private.

And the House made orders accordingly, except as to summons for witnesses.

On the same day it was ordered, That the Attorney General should appoint counsel to produce and manage the evidence at the bar of the House in support of the Bill against Plunkett.

On the same day conferences were held between the two Houses, wherein the Commons desired that the letters and papers formerly delivered by them to the Lords might be returned, to be used upon Plunkett's Bill; and the Lords accordingly delivered the same.

On the 5th of April the papers were redelivered to the Lords; on the 27th of May they were restored to the Commons, who ordered that the Speaker should return them to one of the secretaries of state.

On the 27th a petition of George Kelly, clerk, prisoner in the Tower of London, was presented to the House, and read; setting forth, That, since the petitioner hath been allowed the use of pen, ink, and paper, by order of the House, and also counsel and solicitor to advise with him, he hath proceeded to prepare for his defence against the Bill for inflicting certain pains and penalties upon him. And the petitioner being advised, that the proper time for his being heard against the said Bill will be at the second reading, which is appointed on Monday next, and the evidence against the petitioner are then to attend, the petitioner finds it impossible to be ready at that time, by reason of the length and variety of the charges alleged against him: that Mr. Michael Birmingham, surgeon, and messieurs Bask and Borgonio, merchants, who reside at Paris, and Mr. Gordon, banker, at Boloign, in France, are material witnesses for the petitioner; but the said persons cannot, as the petitioner apprehends, be compelled to leave their affairs, and make a journey to England, to give evidence at the bar of the House: and praying, that the second reading of the said Bill may be put off till Monday sevennight; and that he may then be heard by himself and counsel, at the bar of the House, against the said bill; and that the depositions, upon oath, of the said Mr. Birmingham, Mr. Bask, and Mr. Borgonio, to be taken at Paris, before a public notary, or before some or one of the British residents there; and also, that the deposition of the said Mr. Gordon, to be taken, upon oath, before the chief magistrate of the town of Boloign, or a public notary there; may be admitted to be read at the bar of the House as evidence for the petitioner.

Resolved, That the said petition be rejected.

On the 28th, the order of the day being read, for the second reading the Bill for inflicting certain pains and penalties upon John Plunkett;

Ordered, that the Speaker's chamber, and lobby, be cleared of all persons except the counsel, solicitors, and witnesses; and that the back-doors be locked up, and the keys brought up to the table.

And the serjeant at arms gave an account, that the Speaker's chambers, and lobby, were cleared: And he brought the keys up to the table: Where they were locked up by the clerk:

And the counsel were called in:

And the Bill was read a second time:

And the counsel for the Bill produced extracts of several original letters from abroad, giving intelligence of the conspiracy mentioned in his majesty's speech:

And the translations of the said extracts were read.

A copy of a letter stopped at the post-office, being produced by the counsel for the Bill, and part of it being in cypher, the decypherers were examined: and the officer of the post-office, who copied the said letter from the original, which was sent forward, was also examined:

And then the counsel were directed to withdraw.

A motion being made, that the copy of a letter stopped at the post-office, and copied by one of the officers belonging to the said office, the original letter being sent as directed; be admitted to be read as evidence;

An amendment was proposed to be made thereto, by adding, at the end thereof, these words, "of the conspiracy in general:"

And the question being put, that those words be added at the end of the question;

It passed in the negative.

Then the main question being put;

Resolved, that the copy of a letter stopped at the post-office, and copied by one of the officers belonging to the said office; the original letter being sent as directed; be admitted to be read as evidence.

Then the counsel were called in:

And the said copy was read:

And the counsel proceeded to examine several persons, in relation to other letters stopped in like manner; and also to several original papers and letters, in the hand-writing of John Plunkett: And Matthew Plunkett, serjeant of

invalids, was examined as to discourse between him and John Plunkett, in relation to the conspiracy:

And then the counsel produced a letter, said to be writ by the Pretender to John Plunkett, when he was at Rome:

And some witnesses were examined in relation to the said letter:

And the said letter was read:

And the counsel summed up the evidence.

And then the counsel withdrew.

And Mr. Speaker opened the Bill.

Resolved, that the Bill be committed to a committee of the whole House.

Resolved, that this House will, to-morrow morning, resolve itself into a committee of the whole House, upon the said Bill.

On the 29th, the House ordered, That the Attorney General should appoint counsel to produce and manage evidence in support of the Bill, against Kelly alias Johnson on April 1st, and that he should be heard by counsel against the said Bill at the same time.

Orders were also made, that Kelly alias Johnson should be brought to the bar on that day; that a list of his witnesses should be delivered to the Speaker, and that certain persons should attend on the same day.

On the said 29th of March, the House in a committee went through Plunkett's Bill and made amendments thereto, which amendments were, on the following day, reported and agreed to by the House. And on

April 5th, the said Bill against Plunkett was read a third time, and was passed by a majority of 254, against 77.

On April 1st, the House being acquainted, that Mr. Serjeant Darnel had declined appearing at the bar of this House, as counsel for George Kelly, alias Johnson, clerk, being engaged in business at the assizes in Sussex;

Ordered, that Fettiplace Nott, esq; be allowed to be counsel for the said George Kelly, instead of Mr. Serjeant Darnel.

Mr. Chancellor of the Exchequer acquainted the House, that several papers, relating to the matter upon which the House is to proceed this day, having come to the hands of the lord Carteret, one of his majesty's principal secretaries of state, his majesty had directed, that they should be laid before this House: And he delivered them to Mr. Speaker;

And the same were read at the table; and ordered to be delivered to Mr. Attorney General.

Ordered, that the said papers be printed: and that Mr. Speaker do direct the printing thereof: and that no other person do presume to print the same, but such as he shall appoint.

The order of the day being read, for the second reading of the Bill for inflicting certain pains and penalties upon George Kelly, alias Johnson;

Ordered, that the Speaker's chambers, and lobby, be cleared of all persons, except the prisoner, the officers of the Tower, the counsel, solicitors, and witnesses.

And the serjeant at arms acquainted the House, that the Speaker's chambers and lobby were cleared accordingly.

Ordered, that the serjeant at arms do stand with the mace, at the bar, whilst the prisoner is there.

Ordered, that the Bill for inflicting certain pains and penalties on George Kelly, alias Johnson, be read to the prisoner, and the counsel, whilst they are at the bar.

Then the deputy-governor of the Tower, attended by several of the wardens, brought the prisoner to the door of the House: Where the serjeant at arms received the prisoner, and brought him in to the bar: and the serjeant, or his deputy, stood on the prisoner's right hand, with the mace in his hand, resting it on the floor all the while.

Then the counsel for and against the Bill were called in:

And the Bill was read, in the presence of the prisoner and counsel:

And the counsel for the Bill opened the evidence; and produced a scheme taken amongst Mr. Layer's papers; which was read: and afterwards produced a copy of a letter, written in cyphers, stopped at the post office:

And the counsel against the Bill objecting to the reading the said letter as evidence;

The counsel on both sides were heard thereto.

And then the prisoner and counsel withdrew.

And the question being put, that the copy of a letter, written in cyphers, and stopped at the post office, and copied by the officers of the said office, the original letter being sent as directed; and the said copy being decyphered, and testified by the decypherers to be truly decyphered, be admitted to be read as evidence; it was resolved in the affirmative, by 275 against 122.

And the prisoner and counsel were called in; and Mr. Speaker acquainted them with the said resolution:

And the said copy was read.

A paper of John Plunkett's hand-writing taken in his lodging, being offered as evidence by the counsel for the Bill; and it being objected to by the counsel against the Bill;

The counsel on both sides were heard thereto.

And then the prisoner and counsel withdrew.

Resolved, That a paper in John Plunkett's hand-writing, taken by one of his majesty's messengers, when the said Plunkett's lodgings were searched, and his papers seized, be brought up to the table.

And the prisoner, and the counsel, were called in; and Mr. Speaker acquainted them with the said resolution:

And the said paper was brought up.

The copy of a letter, dated London, 31 May, 1722, signed J. Rogers, stopped at the post-house, being offered to be read by the counsel for the Bill;

And the same being objected to by the counsel against the bill, as not being examined with the original letter by the clerk, who copied the said letter;

The counsel on both sides were heard thereto.

And then the prisoner and counsel withdrew.

A motion being made, that the copy of a letter, dated London, May 31, 1722, signed J. Rogers, stopped at the post-office, and copied by one of the officers belonging to the said office; the original letter being sent as directed; be admitted to be read as evidence; the same not being proved to be examined with the original letter;

An amendment was proposed to be made to the question, by leaving out these words, "the same not being proved to be examined with the original letter."

And the question being put, that those words stand part of the question; it passed in the negative, by 261 against 100.

Then the main question being put, that the copy of a letter, dated London, May 31, 1722, signed J. Rogers, stopped at the post-office, and copied by one of the officers belonging to the said office; the original letter being sent as directed; be admitted to be read as evidence; it was resolved in the affirmative, 231 against 112.

And then the prisoner and counsel were called in; and Mr. Speaker acquainted them with the said resolution:

And the said letter was read:

And also another letter, dated June 21, 1722.

An examination of Philip Neynoe (who, in endeavouring to make his escape out of the custody of a messenger, was drowned) being offered, by the counsel for the Bill, to be read; was objected to, and after hearing counsel on both sides, the same was admitted to be read: and farther written evidence in support of the bill was read.

On April 2d, the evidence in support of the Bill was concluded. Then the counsel for the bill summed up their evidence. The counsel against the Bill were heard, and opened their evidence, and examined witnesses, and summed up their evidence.

The prisoner Kelly alias Johnson was heard at the bar.

The counsel for the Bill replied:

The prisoner and counsel withdrew.

And the Bill was ordered to be committed by a majority of 246 against 100.

On the next day it went through the committee.

And on April 6, it was read a third time, and passed without a division.

On April 3, it was ordered, That the Attorney General should appoint counsel to produce and manage evidence at the bar, on the morrow, in support of the Bill against the bishop of Rochester.

April 4. Mr. Speaker acquainted the House, That he had, since he had taken the chair, received a letter from the lord bishop of Rochester; which his lordship desired might be communicated to the House: and Mr. Speaker read the said letter to the House, containing in substance,

That his lordship, though conscious of his own innocence, did, on several accounts decline giving this House any trouble to day: and contented himself with the opportunity, if the Bill goes on, of making his defence before another, of which he hath the honour to be a member.*

The counsel for the Bill were called in.

* "March 29. A petition of Francis lord bishop of Rochester, prisoner in his majesty's Tower of London, was presented to the House, and read; setting forth, That by order of the House of Commons, he has received a copy of a Bill, for inflicting certain pains and penalties upon him, for supposed crimes, of which he is innocent: that by another order of the said House (upon the petitioner's letter to the Speaker,) counsel and solicitors are allowed to come to him, to assist him in the making his defence. But the petitioner finding by a standing order of this most honourable House, of the 20th January, 1673, that no lord may appear, by counsel, before the House of Commons, to answer any accusation there; he is under great difficulty. And that he may not do any thing which may give offence to their lordships, and be derogatory to the rights of peerage, in which, as a member of this House, he has the honour to partake; the petitioner humbly prays their lordships' directions, for his conduct in this behalf.

"And the said standing order being read:

"A motion was made,

"And the question was put, That the bishop of Rochester, being a lord of parliament, ought not to answer, or make his defence, by counsel or otherwise, in the House of Commons, to any bill or accusation there depending?

"It was resolved in the negative.

"Dissentient.

"1st, Because, we conceive the permitting the lord bishop of Rochester to make his defence in the House of Commons, would be directly contrary to the words and meaning of the standing order of the House, bearing date 20th January, 1673, which expressly and clearly orders, that for the future, no lord (which extends to lords spiritual as well as temporal) shall go down to the House of Commons, or send his answer in writing, or appear by counsel, to answer any accusation there. And it is observable, that this order is worded absolutely, and not qualified by the words, 'without leave of the House,' as the following standing order, of 25th of November, 1696, which prohibits lords from going into the House of Commons while the House is sitting, is qualified; from which different penning, as well as from the preamble of the said first mentioned order (which shews, the mischief designed to be prevented was the giving leave, in cases of lords desiring it, to appear, or answer accusations in the House of Commons,) we infer, that the said order, of January, 1673, was meant as a rule for all future times, that if leave should be asked by a lord of parliament to answer, or make a defence, to an accusation (in any form, as we

The Bill was read; the counsel opened their evidence: papers were read and witnesses examined; the counsel summed up the evidence and withdrew. The Speaker opened the Bill, which was ordered to be committed on the morrow.

conceive) in the House of Commons, it ought to be denied, as deeply intrenching on the privileges of this House.

"2ndly, The said standing order, in affirmance of which the question was moved, ought to be of the greater weight, in our opinions; it having been founded on the consideration and report of a committee (to whom it was particularly referred to consider the practice of lords desiring leave to answer accusations in the House of Commons,) on the perusal of precedents in that committee, and upon serious consideration and perusal of the same precedents in the House itself.

"3rdly, We cannot apprehend but that a bill, by which crimes are charged, and a preparation is made to inflict penalties if the crimes are proved, contains very clearly an accusation; especially when a day is given, and counsel allowed by the House of Commons, to the person against whom the crimes are alleged, to make a defence to the same; which proceeding, though in the legislative capacity of that House, carries in it all the essential parts of a judicial trial: and we therefore conceive, that this House ought to be more jealous of their members answering in the House of Commons an accusation in this form, rather than in any other, since thereby they submit themselves to try the point of their being guilty or not guilty in the House of Commons; and that in order to receive the sentence and judgment of that House, by passing or rejecting the bill: and this, in our opinions, more deeply intrenches, as the standing order expresseth it, on the privileges of this House, than a lord's going down to the House of Commons, during a debate there, to prevent an impeachment, doth; the latter being only to prevent an accusation; but the former is (as we clearly conceive) to answer an accusation there, the very thing prohibited by the standing order.

"4thly, We think the accusation which lords are prohibited to answer by this standing order, must be chiefly, if not only, understood of an accusation couched in a bill (as in the present case); since we never heard that any lord of parliament did, at any time, answer to, or defend in person or by counsel, an impeachment in the House of Commons, though they may have gone down to that House by connivance, to prevent such impeachment; and therefore lords defending themselves in the House of Commons, against an impeachment, could not be the mischief intended to be cured by the said standing order.

"5thly, That the House of Commons, on bills to inflict penalties, do proceed, strictly speaking, in their legislative capacity, is certainly true; and yet it is plain to us, that in reality they partake, in such cases, with the House of Lords in the judicature; or which is all one, in trying and adjudging offenders to punishment: and though the Lords should, in very extraordinary cases, think fit to concur in such a method of punishing; yet it is, in our opinions, going by much too far, for the Lords to permit any of their body to make defence in the House of Commons, either by himself or counsel, which is letting themselves down to a very great degree, and giving an unnecessary encouragement to that manner of proceeding. And when lords have so far submitted to this course, we think there is little reason to expect that afterwards the Commons will ever appear at the Lords' bar as accusers, when they can by this way make themselves as much judges, even over lords, as in this proceeding by bill, the Lords themselves are.

"6thly, Though lords, by not being permitted to appear, either in person or by counsel, to defend themselves in the House of Commons, may be thought possibly to lose some advantage in their defence; yet we think it was and is the true meaning of the said standing order first mentioned, that a lord should rather suffer something of inconvenience in that particular, and commit his cause to God, and the justice of the House of which he is a member, and who are his proper judges, than in any degree debase or derogate from the legal state and dignity of the Lords in general.

"7thly, Although there be (as we conceive) a very manifest and important difference in reason, as to the matter of this question, between the case of bishops (who are declared, by the standing order of the 23rd May, 1628, to be only lords of parliament, and not peers, for they are not of trial by nobility) and that of peers of the realm, who undoubtedly, for matters of treason and felony, are triable by their peers only; yet since by the standing order first mentioned, bishops are as much and as clearly prohibited to answer any accusation in the House of Commons as the Peers or Lords temporal are, we cannot but apprehend, with the deepest concern, that this case may be used hereafter as a precedent (though, as we take it, far from being a precedent in point,) to bring by degrees the Peers of the realm to defend themselves against accusations of the like nature in the House of Commons; which if once brought to be a practice, we are of opinion, that the Peers of the realm would, in great measure, be degraded from their peerages; and so, by weakening and debasing the order of nobility, which in its institution was meant, or at least hath proved, a lustre and security to the crown, the safety as well as dignity of the crown itself may be hereafter in a great degree impaired.

Scarsdale, Dartmouth, Cowper, Gower, Bathurst, Bruce, Guilford, Trevor, Compton, Strafford, Litchfield, Aylesford, Arundell, Poulett, Hay, Ashburnham, Uxbridge, Foley, Bingley, Weston, Montjoy.

April 6. The Bill went through the committee with amendments, which were reported on the 8th.

And on the 9th the Bill was read a third time and passed.

"Then a motion was made, That the bishop of Rochester be at liberty to make his defence in the House of Commons, in person or by counsel, if he shall think fit.

"And the standing order of the 28th of April, 1699, That no motion shall be granted, for dispensing with a standing order of this House, the same day it is made, being read;

"And a question being stated upon the said motion:

"After debate;

"The previous question was put, Whether the said question shall be now put?

"It was resolved in the affirmative.

"Then the main question was put, That the bishop of Rochester be at liberty to make his defence in the House of Commons, in person or by counsel, if he shall think fit?

"It was resolved in the affirmative.

"Resolved, by the Lords spiritual and temporal in parliament assembled, That the lord bishop of Rochester be at liberty to make his defence in the House of Commons, in person or by counsel, if he shall think fit.

"Ordered, That the gentleman usher of the black rod attending this House do forthwith acquaint the lord bishop of Rochester with the said Resolution."—Lords' Journal.

Mr. Hatsell (Precedents, vol. 4, title Impeachment, in a note to art. 24,) notices that the duke of Buckingham (see his Case vol. 6, p. 1034) having at his request been admitted into the House of Commons, and heard on the 14th, and the earl of Arlington (see his Case, vol. 6, p. 1056) on the 15th of January, 1673-4, induced the Lords on the latter of those days to refer it to the committee of privileges to search the Journal, what hath been formerly the practice in such cases. On the 20th of January the committee report "that their lordships have searched and perused several precedents, and thereupon conceive that it may deeply intrench into the privileges of this House, for any lord of this House to answer an accusation in the House of Commons, either in person, or by sending his answer in writing, or by his counsel there." Upon serious consideration had thereof, and perusal of the said precedents, it is ordered, "That for the future no lord shall either go down to the House of Commons, or send his answer in writing, or appear by his counsel, to answer accusation there, upon the penalty to be committed to the Black Rod, or to the Tower, during the pleasure of this House." And it is ordered, that this order be added to the roll of the standing orders.

Proceedings in the House of Lords.

On March 16th the House of Lords referred the Report, together with the several papers delivered therewith by the House of Commons on the preceding day at a conference, to a committee consisting of nine lords chosen by ballot, viz.

His grace the duke of Montrose, his grace the duke of Dorset, the earl of Lincoln, the earl of Scarborough, the earl of Ilay, viscount Lonsdale, viscount Torrington, lord bishop of Salisbury, (Willis); lord bishop of Lincoln, (Gibson.)

This committee made their Report on April 23rd, which was as follows:

The committee to whom the Report and original papers relating to the conspiracy, delivered by the House of Commons at several conferences, were referred, and who were empowered by your lordships to examine Christopher Layer, and such other persons as they from time to time should think proper; having carefully compared the said Report with the original papers referred to them, and having examined several persons in relation to the treasonable practices and correspondences therein set forth, are fully satisfied and convinced, that a detestable and wicked conspiracy has been formed and carried on for soliciting a foreign force to invade these kingdoms, for raising a rebellion, and inciting insurrections in London, and divers other parts of Great Britain, and even for laying violent hands on the sacred person of his majesty, and on his royal highness the prince of Wales, in order to destroy our religion and constitution, by placing a Popish Pretender on the throne.

And the lords committees think themselves obliged in justice to observe, that the extraordinary vigilance and application which has been shewn by the House of Commons in detecting this scene of iniquity, and laying its most hidden springs in so full and clear a light, as it has greatly contributed to the public safety, by opening the eyes, and awakening the just resentment of an injured nation; so it cannot fail to excite a proportionable zeal and emulation in your lordships, for concurring with that House in the no less necessary work of bringing the authors of these wicked designs to such exemplary punishment, as may be a lasting admonition to posterity, that artifice and disguise can no more lessen the danger, than mitigate the guilt of treason; and that they act under a fatal delusion, who hope to abuse the lenity of our laws to the ruin of our constitution.

The lords committees think it a strong confirmation of the truth and exactness of the said Report, that several material observations which are there advanced as grounded on probable conjectures only, have since been amply verified and supported by fresh discoveries, arising from the papers lately referred to them by your lordships; which papers are contained in an appendix annexed to this Report.

The intelligence sent by colonel Stanhope, and sir Anthony Westcombe, in relation to the Pretender's ships under Morgan, as well as the explication given by the committee of the House of Commons to several of the fictitious names in the intercepted correspondence, is very much illustrated and confirmed by papers seized on board the Revolution, and by the examinations of some of the prisoners belonging to that ship.

It appears by those papers and examinations, that Morgan, who went by the name of Walton, and Gallwey (an Irish Roman Catholic), who went by the name of Gardiner, with others acting under their direction, have for several years past been employed in fitting out ships under English colours, which were ready on all occasions to attend the motions of the Pretender, who in several of the letters is styled their king, and their royal master. That the money for these ships was supplied partly by persons in England, partly by Waters the banker at Paris, and partly by the late duke of Ormond. That one of these ships, in the year 1719, was sent by Morgan to the Groyne, with an express to fetch the late duke of Ormond to England; at which time it appears that Morgan and Gallwey were promised a supply of fifty thousand pounds from friends in England; that others of these ships lay hovering about the coast of Britanny from the year 1718 to 1721, expecting to be employed either by Cane and Chivers (general Dillon) or by Hore (sir Harry Goring), in what they call their home trade. That in the year 1721, despairing of any employment of this kind, on account, as is expressed in one of their letters, of Hore and his partners being cowards in trade, they engaged themselves in the service of the Swedish Madagascar company, and in December 1721, rendezvouzed in the Bay of Cadiz for this purpose; but this project likewise failing, on account of some deficiency on the part of the Swedes, Morgan waited on the late duke of Ormond at Madrid, and was by him supplied with twelve thousand pieces of eight, for fitting out the ships Lady Mary and Revolution for the Pretender's service; soon after Morgan's return to Cadiz, the arms and ammunition which had been prepared for the Madagascar voyage, consisting of two thousand muskets, two thousand bayonets, one thousand carbines, four hundred barrels of powder, and a proportionable quantity of match, flints, &c. were consigned to Morgan, and by him put on board the Pretender's ship called the Lady Mary; and Morgan having embarked on board the said ship with several Irish officers, set sail from the bay of Cadiz the latter end of April 1722, and went first to Sancto Antonio, and then to Sancto Andero in the bay of Biscay.

The committee having sent for Mr. Gustavus Bâhr, formerly a captain in the Swedish service, who being at Cadiz on account of the Madagascar expedition, had occasion to transact several affairs with Morgan, and the other officers of the Pretender's ships, they were informed by him, that the arms above-mentioned were brought, part of them from Gottenburg, and part from Hamburg, by one of the Pretender's ships, named the Fortune, commanded by one Butler. That 2,000 of the said arms belonged to the Swedish Madagascar company, and were delivered by him, Bâhr, to Morgan.

That the remainder, which belonged to count Rhenstierna, a Swede, were also purchased by Morgan, but not till some weeks after the first 2,000. That Morgan went to Madrid, and returned with 12,000 pieces of eight in bills and money, which sum he, Bâhr, saw in Morgan's hands. That baron Seebach, and one Osthoff (who are frequently mentioned in Morgan's letters), as also count Rhenstierna's agent, who delivered the arms to Morgan, declared to him, Bâhr, since his return to Gottenburg, that Morgan was supplied with these 12,000 pieces of eight from the late duke of Ormond, and that the arms were paid for out of the said money. And Morgan's son being examined by the committee, owned that his father went at that time to Madrid; that the late duke of Ormond was then there, and that his father did there receive bills for fitting out the ships, but from whom he cannot tell.

Bâhr farther declared, that all the Swedish officers at Cadiz looked on Morgan's ships as belonging to the Pretender, and spoke of them in all conversations as such, which was confirmed to him expressly by baron Seebach and Osthoff. And one of the sailors of the said ships owned to the committee, that they went from port to port without taking in any cargo; that they had sometimes but sixty, and sometimes 130 men on board the Revolution, and often received orders for sailing with all possible expedition; which orders were afterwards countermanded, without any apparent reason for one or the other; and that this unaccountable proceeding satisfied him the said ships were engaged in some unwarrantable design. Bâhr farther declared, that Osthoff told him, the ship Revolution was at first purchased in England, for transporting the late king of Sweden in person, in his projected descent on Scotland; and that he, Bâhr, saw the name Carolus still standing in the cabin of the said ship, when he was last on board her. And Morgan's son owned, that he had observed the arms of the crown of Sweden in the said cabin, which he supposed were placed there as a token that the said ship was engaged in the service of the Swedish Madagascar company; though he owned that the other ships engaged in the same service had no such token.

Some of the particulars above related, do very much explain and confirm O——'s letter to L—— of the 27th of April, as also those to Dumville and Dodsworth, in which it is said, that the hopes of remittances from persons in England had induced O—— to supply M—— (which appears to be Morgan). That O—— could depend on 2,000 arms from M—— (which appear to be the 2,000 arms delivered by

Morgan by Bâhr before the date of O——'s letter). That M—— had writ from C—— (which appears to be Cadiz) that he could get more arms if he had more money; and accordingly the committee find that a second supply of arms was purchased by Morgan from count Rhenstierna's agent. O—— in his letter to L——, dated the 27th of April, says, "I have ordered M——'s ship to come to A——;" and it appears that Morgan did at that very time embark on board the lady Mary, with the arms above-mentioned, and went first to Sancto Antonio, and soon after to Sancto Andero.

The sailors on their examination having mentioned one Hilton, as commanding a ship under Morgan, and the committee finding a letter from Morgan, directed to Don Nicholas, which in a subsequent letter is mentioned to have been writ to the said Hilton, they thought it probable Hilton might be a fictitious name for Nicholas Wogan, in the same manner as Walton was for Morgan, and Gardiner for Gallwey. Having accordingly examined the sailors as to this particular, one of them said, he believed Hilton was a fictitious name; and Morgan's son owned that Hilton's true name was Nicholas Wogan, and that he had been confined in England on account of the Preston rebellion, as he was told by Nicholas Wogan jun. who went by the name of Paterson: and one of the sailors declared, that the said Wogan sen. obtained the command of one of the ships under Morgan, after their arrival in the bay of Cadiz.

These particulars agree with Glascock's letter to George Kelly of the 24th of April, O. S. in which he mentions Nicholas Wogan by the name of Xoland, as being to have the command of a vessel at Cadiz to cruise against the Turks, or for other views, on which he will not pretend to decide; and Kelly answering this letter, wishes Wogan's chief may succeed in his journey. The same particulars confirm Mr. Crawford's letters of the 18th and 25th of July, by which it appears, that the two Nicholas Wogans were at that time come to Morlaix, expecting Morgan's ships to follow them to that port, in order to their setting sail for England; that the eldest of them was to have been captain, and the other lieutenant of one of those ships, and that they owned the project in Spain, by what they had learnt of it, was for the late duke of Ormond to have landed in the West with Irish officers and arms.

On the 8th of June, N. S. colonel Stanhope writ word, that the late duke of Ormond was preparing to embark with arms and officers for England. And your committee find, that about that time the ship Revolution set sail from the bay of Cadiz: that the sailors knowing the Madagascar voyage to be dropped, refused to do their duty till they were satisfied as to the place they were designed for. That hereupon Gallwey assured them it was to Gibraltar, in order to clean the ship; but having got them under sail, and satisfied them about their wages, they proceeded to the bay of Biscay: that they put in at Sancto Antonio to take Morgan on board, and then joined the Lady Mary at Sancto Andero. That upon their arrival at this place, the common report on shore was, that the late duke of Ormond, and four companies of soldiers were to be taken on board the Revolution: that corn and cattle were provided for the said soldiers; and that the late duke of Ormond was within a short day's journey of Sancto Andero: that hereupon the first and second mate of the said ship, suspecting Gallwey to be engaged in some unwarrantable design, agreed not to serve any longer, unless Gallwey would give them a note under his hand that they were forced into the service, and would also declare whither they were bound, and give them security that they should not be employed in any other voyage than such as he should declare to them; whereupon one of them was confined, and the other discountenanced by Gallwey.

But that Gallwey's real expectations were to have come over with the late duke of Ormond, appears to the committee most evident from the copy of a letter of his, dated the 16th of June, the day before he set sail from Cadiz, in which are these words, "I hope the —— will set sail to-morrow; your not repeating orders and advice concerning the business in hand gives me a thousand apprehensions; God send our bankers and the rest of our friends are safe, and stand their ground. I intend to embark myself on board the —— for fear my dear aunt should have any occasion for assistance, of whom I am so tender that I would not if possible have the care of her put into any other hands."

The committee observe, that the same expression of 'my aunt,' is used in the letter to Dodsworth, with such circumstances as make it highly probable, that in that letter, as well as this of Gallwey's, it denotes the late duke of Ormond. They likewise observe, that the names of Mansfield and Medley are used in Morgan's and Gallwey's letters, in such a manner as confirms those names to mean the late duke of Ormond, agreeably to the explication given them in the Report of the committee of the House of Commons.

Gallwey in his letter of the 3rd of November, 1722, says, he has a couple of fine greyhounds, a dog and a bitch, for Mr. Freeman; the same dogs are mentioned in another letter, and in the depositions of two of the sailors, to have been a present from the late duke of Ormond to the Pretender: which confirms the explication of the name of Freeman, mentioned in the said Report, to be true.

There was likewise seized on board the Revolution, a letter to Gallwey, signed John Obrien; which appears to be in the same hand-writing with the letters signed Gerrard and M. Digby, taken among Mr. Dennis Kelly's papers, and confirms Gerrard to mean sir John Obrien, one of Dillon's*

* So in Former Edition.

Gallwey, in a letter dated from Alicant Bay, the 13th of September last, expresses his concern for Kelly's confinement, but hopes that is the worst that can befall him; and a letter in Kelly's hand-writing signed Ja. Johnson, directed for Gardiner, but enclosing a note for 20 guineas payable to Gallwey, was found on board the Revolution; as also a direction entered with Kelly's own hand in a pocket-book, supposed to belong to Morgan. Kelly in his letters, acknowledges the receipt of one from sir John (which is probably their common correspondent, sir John Obrien) and says their friends in Spain are well, as one of the family writes him word: which shews how extensive Kelly's correspondences were.

Gallwey, in a letter from Genoa of the 3rd of November, 1722, (which appears to have been writ to one of the Pretender's family) says, he has acted for many months past under the direction of Medley (Ormond,) who, he makes no doubt, has mentioned him to Mr. Freeman (the Pretender;) yet in his letter to lord Carteret, after his ship was taken, he has the assurance to affirm, that he never saw the late duke of Ormond since he left England, nor ever corresponded directly or indirectly with him or the Pretender, or any of their adherents at home or abroad, but was always zealously well-affected to his present majesty and our happy establishment.

Gustavus Bâhr, above-mentioned, deposes among other particulars, that he has been informed the Pretender's agents had arms for 3,000 men, lodged at a house belonging to the late duke of Ormond, near Morlaix in Brittany; which port the committee observe, was one of the usual stations of the Pretender's ships under Morgan. And it appears probable, that these 3,000 arms made part of the 10,000 mentioned in O———'s letter to L—— as provided by D———, who is supposed to be Dillon.

Robert Franklyn, second mate of the ship Revolution, deposes, that letters directed to John or James Jacobs at Genoa, were taken up at the post-house by Gallwey. The committee observe, that Jones in his letter to Chivers, mentions his having communicated the copies of Mansfield's and Jacob's letters; and Glascock in his letter to George Kelly of the 1st of May, says, "He hopes money is sent to pay for the barrels which Jacobs has at his disposal." In both which places it is probable, that Jacobs means Gallwey; and that 'barrels' means stands of arms, is confirmed by a letter of Morgan's, in which speaking of that very ship that brought the arms above-mentioned from Gottenburgh and Hamburgh to Cadiz, he says, "She had received orders for taking in 19 barrels, with every thing necessary to make use of them:" which last words seem to refer to the bayonets, flints and powder. The intelligence sent by Mr. Craufurd, on the 27th of May, that Gordon of Boulogne was to have a ship ready to transport some of the chiefs of the conspiracy to England, is confirmed by the deposition of Roger Garth (already published,) who declares, "That the said Gordon (whom he had good reason to believe to be an agent of the Pretender's) did some time last summer endeavour to engage him to ply off that station with his sloop, in order to carry over such persons as he, the said Gordon, should recommend to him, promising him that he should have employment enough."

The lords committees conceive, that the several particulars above related, will appear to the House very much to corroborate the accounts received from abroad, of ships provided for transporting the late duke of Ormond to England, with arms and officers, the beginning of last summer; and that they also confirm the decyphering of the letters, and explication of the names contained in the Report of the committee of the House of Commons.

The lords committees observing that some paragraphs of the letters referred to them were writ originally in cypher, thought it proper to call the decypherers before them, in order to their being satisfied of the truth of the decyphering. The account they received from those persons, was, that they have long been versed in this science, and are ready to produce witnesses of undoubted reputation, who have framed letters in cypher, on purpose to put them to a trial, and have constantly found their decyphering to agree with the original keys which had been concealed from them. It was likewise confirmed to the committee, that letters decyphered by one or other of them in England, had exactly agreed with the decyphering of the same letters performed by persons in foreign parts, with whom they could have no communication; and that in some instances, after they had decyphered letters for the government, the keys of those cyphers had been seized, and upon comparing them, had agreed exactly with their decyphering.

With respect to the intercepted letters in question, they alleged that in the cypher used by George Kelly, they find the words ranged in an alphabetical order, answering the progressive order of the figures by which they are expressed, so that the farther the initial letter of any word is removed from the letter A, the higher the number is, by which such word is denoted: that the same word will be found to be constantly denoted by one and the same figure, except in the case of particles, or words of very frequent use, which have two or three figures assigned to them, but those always following one the other in a progressive order. They likewise set forth, that in the cypher above-mentioned, a certain order is constantly observed as to the placing of the words made use of, that under each letter of the alphabet the first cyphers are allotted to the proper names of places, the next to the proper names or titles of persons, the next to whole words in common use, and the last to denote single letters.

As to the truth of the decyphering, they alleged that several letters written in this cypher

had been decyphered by them separately, one being many miles distant in the country, and the other in town, and yet their decyphering agreed; that facts unknown to them and the government at the time of their decyphering, had been verified in every circumstance by subsequent discoveries, as particularly that of H—'s ship coming in ballast to fetch O—— to England, which had been so decyphered by them two months before the government had the least notice of Halstead's having left England: that a supplement to this cypher having been found among Dennis Kelly's papers the latter end of July, agreed with the key they had formed of that cypher the April before: that the decyphering of the letters signed Jones, Illington, and 1378, being afterwards applied by them to others written in the same cypher, did immediately make pertinent sense, and such as had an evident connection and coherence with the parts of those letters that were out of cypher, though the words in cypher were repeated in different paragraphs, and differently combined. And they insist that these several particulars duly weighed, amount to a demonstration of the truth of their decyphering.

As to the other cyphers made use of by Jernegan, Stanley, and Walter Grahame, they consist only of twenty-four figures, for the twenty-four letters of the alphabet, and some other figures for proper names or whole words, in the placing of which names a certain order is also observed.

These several particulars they declared themselves ready to attest upon oath, and to produce sufficient witnesses to their character and integrity, as well as their skill.

The committee being empowered by your lordships to examine Christopher Layer, did accordingly spend some time in the said examination, which produced a tedious repetition of the particulars contained in his examination before the committee of the House of Commons, and some few circumstances which they found he had recollected by reading the printed Report and Appendix.

All that he confessed to them which is new, was, that he did, before his setting out for Rome, acquaint Plunkett with his intentions of carrying over a note of the names of the Tory gentlemen of Norfolk, if Plunkett thought it would be acceptable; that during his stay at Rome, sir William Ellis told him, that he had formerly corresponded with Plunkett at the request of the lady Middleton, but that he had not, for some time past, corresponded with Plunkett, or any one else, in relation to the Pretender's affairs: for that from the time of the action at Dumblain so many Scottish noblemen and gentlemen had come over to the Pretender, that he and all the rest of the old servants had been forbid all correspondence in England, or elsewhere. Upon Layer's desiring leave to correspond with him if it were practicable, he told Layer, that on condition he would promise to write nothing but what might be shewn to the Pretender himself, he would settle a correspondence with him; for that though he had followed the fortunes of the late king James and his family, ever since the revolution; and had always been faithful to the Pretender, and for many years his cashier, yet if any of the Scottish gentlemen that were about the Pretender, should know he received a letter without communicating it to him, it would cost him his place, and he should be in utter disgrace: that Layer promising to write nothing but what might be shewn, Ellis gave him a cypher of his own hand-writing, as also another cypher of cut paper for carrying on the correspondence; that he, Layer, likewise settled a cypher of fictitious names with Mrs. Hughes, nurse to the Pretender's child, and received a letter from her in relation to the christening of his daughter. He would not own that he knew of any other cypher, and persisted that Mrs. Kinder meant the said Mrs. Hughes, though in Ellis's cypher it stands for Mrs. Fox. He said, that the paper which he desired a copy of from sir William Ellis, and which is referred to in Ellis's letter of the 30th January, was a short scheme relating to the Preston affair, shewn him by Ellis while he was at Rome, of which he remembers no other particulars, but that insurrections were to be begun in several counties in a dark night. That when he made application to Plunkett for the fictitious names of Burford, Steele, &c. he was forced to acquaint Plunkett with his having settled a correspondence with Ellis, which Plunkett resented, and said he thought Ellis had been forbid all correspondence with persons here. That the reason of his asking Plunkett for a fictitious name for lord Orrery, was, that he had occasion to mention to Ellis a club which Plunkett had often told him of; that Plunkett once shewed him a list of this club, of his own hand-writing, which he read over two or three times, but that Plunkett talked so inconsistently of them, that he, Layer, verily believes it was a mere fiction of his own, and that there never was any such club. That he, Layer, thinks lord Orrery mentioned to him lord Strafford, as one of those, who with lord North, sir Harry Goring, and others, were (as lord Orrery was informed) going to do a rash thing in favour of the Pretender: but that he cannot be positive as to lord Strafford. That he, Layer, wrote himself to the Pretender concerning the difference of opinion which he observed in lord North and lord Orrery about the means of restoring him, and the necessity there was that the regent should permit general Dillon to come over here with some foreign forces. That he also drew up a scheme of a lottery to have been opened here in favour of the Pretender, and enclosed the said scheme in a parcel with some silk stockings, which he sent as a present to the Pretender and his spouse by Andrew Haye, who travelled to Italy with alderman Barber. That he delivered this parcel to Haye with his own hands, who promised to convey it to Ellis, and said he could do it with safety. That Haye, as he believes,

understood the stockings to be for the Pretender and his spouse: that he likewise had some discourse with Haye about getting copper-plates engraved at Rome in English and Italian for the tickets of the said lottery, and desired him to receive sir William Ellis's directions about it; which Haye promised to do. That while he, Layer, was at Rome, Haye asked him whether he would not see the king, meaning the Pretender; and that the said Haye went frequently to the Pretender's family in the way of his business, and was as he believes, present while the Pretender's and his spouse's pictures were drawn.

Haye being examined by the committee, owned the receipt of the stockings, but denied their being delivered to him by Layer, or that he knew who they were for. He likewise owned the carrying a packet to Belloni, the banker at Rome, which was brought to him by a porter from Layer, as he supposed.

Layer owns, that Haye told him Belloni was the Pretender's banker; but denies his sending any such packet by Haye: and in several other particulars of their examinations they contradicted each other.

A scheme of the lottery above-mentioned (for raising 225,000*l.* sterling) having been found among the papers of Walter Jeffereys, now in custody, the lords committees thought proper to examine him how he came by it. He owned his being acquainted with Layer and Plunkett; that he saw Layer about the time of his going abroad, and helped him to a bill on a banker at Antwerp: but he denied his knowing from whom he received the said scheme, or his having had any conversation with any one about it; and said it might be put into his hands by Plunkett, for aught he knew, but that he was not sure he had ever read it; and if he had known such a paper had been in his custody, he should have destroyed it.

The lords committees being informed that Layer, between the time of his delivering the larger and lesser bundle of papers to Mrs. Mason, had delivered to her a large parcel covered with blue paper and sealed in several places, and that he did within a few days after take it back again, telling her he wanted to carry it to lord North and Grey's: they examined Layer particularly on this head; but he denied that he ever delivered her any such bundle.

The lords committees next proceeded to the examination of John Plunkett, who began with large protestations of his innocence, and offered of himself to account for three facts charged upon him in the Report, and to shew they were great mistakes. The first was, his receiving a letter from George Kelly; the second, his receiving the letter at Antwerp, signed Dixwell; and the third, his receiving the letter from the Pretender, taken at Mrs. Creagh's. And as in his examination before the committee of the House of Commons he had fallen on the expedient of substituting Hugh Thomas to personate Rogers, so now they found he had furnished himself with three different persons, at different places, all of the name of Plunkett, to whom he would have it believed these letters were written, without offering any the least proof or circumstance of probability to shew that such persons were at all concerned in those letters, or that there ever were any such persons in being.

The letter from George Kelly, he said, was not writ to him, but to one Harry Plunkett, who delivered it to him at Will's coffee-house, Covent-garden, and that it related to some money that was to be raised on a security of Mrs. Barnes's.

As to the letter signed Dixwell, he said, there were two clergymen of the church of Rome, one or both of which travelled with him and Layer from Dover to Antwerp; that one of them went by the name of Lloyd, but his real name was Plunkett. That this man dropped the letter signed Dixwell at a coffee-house; and he, John Plunkett, taking it up with a design of restoring it to him in Lorrain, (to which place sometimes one, and sometimes both of these clergymen were gone) shewed it to Layer, who took it into his head that this letter had been writ to him, John Plunkett.

The letter from the Pretender, he said, fell into his hands much in the same manner: that there is one Father Plunkett at Rome, to whom the Pretender always writes when any body is to be introduced to him. Being asked whether Father Plunkett travelled with Layer to Rome, (because mention is made in the Pretender's letter of a companion of Plunkett's) he said the Pretender always called the person that was to be introduced by Father Plunkett, his companion. That this Father Plunkett happening to shew him this letter, and commending the hand, he, John Plunkett, said he had a friend at Rome that would be glad to see the Pretender's hand-writing. And Father Plunkett having accordingly left the letter with him, he shewed it to Layer, and forgot to return it to Father Plunkett, who never called for it, having fifty more letters of the same kind by him.

Upon the lords committees asking him, whether he went by the name of Rogers? He said he went by several names in his travels, that he might not be imposed upon in his reckonings as the English generally are. Being asked, whether he took the name of Rogers to prevent his being thought an Englishman? He said that in Italy he was called Rogieri.

They farther asked him, whether he had dictated any fictitious names to Layer, or had mentioned any thing to him of a club? To which he answered, That he had given Layer the fictitious name of Bedford, or Burford, for lord Orrery, which name he had from Neynoe. That one night being in company with Layer, and some clergymen whose names he has forgot, the discourse turning on the protests of the Lords, and the names that were subscribed to them, one of the company said, These are a loyal club; another said, They are Jacobites; and that he, Plunkett, said, There was a loyal

club of eighty or ninety lords who would stand in defence of their country.

He farther observed to the committee, That in the Bill now depending before your lordships, he is not mentioned by the name by which he was baptized and confirmed: he said, his surname was Plucknett, but his Christian name he declined telling; and seemed to place some hopes and confidence in this subterfuge.

The committee finding him trifle with them in this egregious manner, asked him in general, whether he had ever been in conference with the Pretender, or had corresponded with him, or any of his agents? To which he answered in the negative.

The committee next sent for George Kelly, who told them that the affair being soon to be brought before your lordships, he desired to be excused from answering any questions; so that they had no opportunity of examining him as to the new matters alledged against him in the depositions of Mr. Philip Caryll and others.

However, they thought it proper to send for the said Mr. Caryll, and to ask him, whether he had any thing to add to, or to retract from his former accounts? His depositions being read over to him, he expressed himself very angry and uneasy at their being made public; and told the committee he was not disposed to answer any further questions, being sorry for what he had said already; he likewise insinuated, that what he had said had not been taken down exactly as he dictated it, and seemed apprehensive that he was called upon to accuse himself of matters that might be prejudicial to him. But upon the committee's telling him that the most effectual way he could take to do himself service, was to make a candid and ingenuous discovery of the whole truth, he said he had already given a candid account, and hoped he should not have been a sufferer for his candour. Being asked, whether his depositions had not been read over to him before he signed them? He said they were; but that he was in a great confusion at the time they were taken. Being then required by the committee to read them over himself, and to shew in what particulars they vary from his sense and meaning, he grew more composed; and having read over the first, dated the 27th of March, said, he believed it was right enough. In reading over the second (dated the 29th of March) he said it was not strictly true that sir Harry Goring had told him what is there related concerning an invasion, commission, &c. but that it was true, he had heard sir Harry Goring say so; that as to lord Landsdown's being to land in the West, he could not be positive, but he thinks sir Harry Goring said so. He said, it was but a supposition of his own, that the discourse which occasioned the bishop of Rochester's taking sir Harry Goring by the collar, related to the Pretender's affairs: But that he remembers very well, sir Harry Goring did affirm, that on his saying the words there recited, 'this is rocking the cradle indeed,' the bishop did take him by the collar, and that he, Caryll, did apprehend the said discourse to have relation to the Pretender's affairs. He said it was about two years ago that being at sir Harry Goring's he saw a letter lie on his scrutore, directed to Mr. Hore, and upon his asking sir Harry who the said letter was for? Sir Harry told him it was writ to himself. He said that the words in his deposition which import, that he, Caryll, had reason to believe Kelly and sir Harry Goring were settling together a key at his house at North, by which they might correspond, are too strong; for that he, Caryll, did not see any such key, only it was his suspicion and thought at that time that they were framing such a key.

He likewise said, that what relates to Boyce in the said deposition is rather stronger than he meant it; for that Boyce only told him he was afraid the servant, he, Caryll, had sent to him to help off, was Sample; alleging this reason, that he had observed he was disguised, and that he was afraid he was somewhat like the description given of Sample in the proclamation. All the other particulars of his depositions he averred to be true, but said, he had nothing farther to add, and that he would rather a thousand times die in Newgate than be an evidence.

Boyce, being examined by the committee, owned that sir Harry Goring went to France in his yatch, and that a servant went over with him in a black wig, whom he had never seen with sir Harry Goring before; but he utterly denied his having conveyed over any person sent to him by Mr. Caryll, or his having had any discourse with Caryll about any person's answering the description of Sample.

The committee having summoned before them William Beasing of Horn-dean, and having read to him his former depositions, find that he retracts what he had there deposed on oath, of Caryll and sir Harry Goring's being in company at his house with the person who had but one hand: He says, such a person was at his house with two other gentlemen, but that he now recollects Caryll and sir Harry Goring were not there at that time. Being asked whether he had received any letter or message, since his being in custody, which had helped to set him right in this particular? He answered in the negative.

The committee observe from the parts of Mr. Caryll's depositions which he affirmed, that the explication given to the name of Hore, in the Report of the committee of the House of Commons, as also the decyphering of that part of Kelly's letter which mentions Hore's commission, and the conjecture of Goring's having carried over a new cypher from Kelly to France, are very much confirmed. They likewise observe, that what is said in Glascock's letter to Kelly of the 20-31 of October, concerning the arrival of the little French merchant, mentioned by Kelly, and the precaution they intend to use in relation to him till some other appears with whom they may talk of business more to the purpose, has probably re-

lation to Sample's being got safe to France. And the letters signed Fra. Phillips, which Caryll owns he received from Kelly, not only confirms Kelly's writing by fictitious names, but is a strong argument of his being the person that writ the letter to Bonnaville of the 27th of September, and consequently the other letters charged upon him in the Report. For as in his letter to Caryll, he says, "I have never heard a syllable from your other lawyer, (Sir Harry Goring) since you and I were with him, which you will say is pretty surprizing, and am afraid very detrimental."—So in that to Bonnaville (writ within five days of the other) he says, "I have not heard a syllable from D. Gainer, or G. Roberts, since Mr. G. Sampson went, which has been a great surprize, and I may say no small detriment, to some of their friends."

This identity of expression, in two letters writ so near the same time, appears to be a farther confirmation that the same person writ them both, and confirms G. Sampson to be the same with the other lawyer, which Caryll has explained to mean sir Harry Goring.

The lords committees also find in the papers referred to them new evidence of Kelly's visiting, writing to, and receiving letters from the bishop of Rochester, as appears by affidavits from the persons who carried Kelly to the bishop's house, and who also delivered letters from him to the bishop, and brought back the bishop's answers; and Mrs. Levet deposes on oath, that Mrs. Barnes has told her, Kelly received in one day as many letters from abroad as came to fourteen or fifteen shillings, the directions of which she, Barnes, saw, but they were in such odd fictitious names, as no one could find out but Kelly, who had the key; that among these letters there was one for the bishop of Rochester, (as Kelly told her) which he was at that time gone to deliver to the bishop. And John Malone deposes, that among the letters which he carried from Kelly to the post, there were some directed to Waters, the banker at Paris, under whose cover it appears that most of the treasonable letters were sent; and the original letter in Kelly's own hand stopt at the post-office was enclosed in a cover so directed. Mrs. Levett farther deposes, that Mrs. Barnes told her under secrecy, that the dog sent from France was a present from the late lord Marr to the bishop of Rochester's lady; which is in some measure confirmed by the draught of the affidavit prepared for Birmingham at Paris, in which he is desired to swear that lord Marr knew nothing of any such dog. And though this affidavit does not appear to have been sent over by Kelly directly, yet express mention is made in the letter to Gordon, that the said affidavit is the copy of a note from the person concerned with the substance of what he thinks requisite. The circumstance of the dog's having been sent by the late lord Marr, which is not expressly alleged in any part of the Report of the committee of the House of Commons, is a new confirmation that the letter signed 918, which mentions the sending the dog, is from Marr; and that Musgrave, to whom the receipt of the dog is acknowledged in two several letters, is likewise a name denoting Marr, agreeably to what is asserted in the said Report.

The committee find by two affidavits referred to them, that George Kelly, the last time he was taken into custody, offered the woman of the house a gold watch, 40 guineas in money, and a note for 40*l.* more, to let him escape.

The committee have laid the substance of these several examinations together, as having some reference to George Kelly.

They likewise examined Mr. Dennis Kelly, who utterly denied his being advised with, or knowing any thing relating to any conspiracy. Several papers found in his custody being shewn to him, he denied his having ever seen them before, except when some of them were shewn to him, at former examinations.

They next sent for captain Pancier, and having ordered his former depositions to be read to him, asked him whether he had any thing to add or retract? He affirmed every part thereof to be true, and said he had only this farther particular to add, that having lately seen George Kelly, as he was brought down to the House of Commons; he recollects that he has often seen him at the gaming-tables with Skeene, and that Skeene and the said Kelly were intimately acquainted, as he is able to prove by several witnesses of credit. Skeene being called in, and having heard Pancier's depositions read over to him, owned that he was acquainted with Pancier, and had been in company with him at several of the times and places mentioned in the said depositions; that he was taken prisoner in the Preston rebellion, but is not related to Marr, nor has ever seen Mackintosh since he parted from him at Highgate. He owned he had had general discourse with Pancier relating to a plot, and that Pancier had asked him several questions about it, to some of which he (Skeene) assented, and to others not; but he denied his having told Pancier any farther particulars than were in the news-papers, or in the current report of the town. As for instance, when Pancier asked him, where the late duke of Ormond was? He told him the news-papers said he was at Corunna; but he positively denied his having ever mentioned to Pancier any particular persons as concerned in the conspiracy, or any of the particular facts specified in his depositions.

He farther said, he had reason to believe that Pancier had sent to him, since his being in custody, to advise him to make his escape; for that one Gerrard Fitzgerald having been walking with Pancier in the Park, came directly from thence to him, Skeene, at the messenger's house, and advised him to make his escape; though he owned that Fitzgerald made no mention of Pancier's having sent him any such advice.

Fitzgerald being sent for by the committee,

owned he had been to see Skeene, and finding nobody at that time in the house but a woman, told Skeene, it would be an easy matter for him to escape; but he cleared Pancier from having sent any such intimation or advice. He farther said, that Skeene told him he did not know but he might have talked foolishly to Pancier, but that if he had, Pancier was but a single evidence, or to that effect.

The committee find, among the papers referred to them, a copy of the orders which Arnold received from the owners of the ship Phineas, requiring him to follow the directions of Roger Nowell (Halstead) during the voyage; as also an affidavit, by which it appears, that the said Halstead was to visit the bishop of Rochester, and staid an hour at his house, a few days before his setting out for Bilboa.

They also find a very remarkable letter sent to one of the secretaries of state, by an unknown hand, dated the 12th of February, 1721-22, and inclosed in one, dated the 31st of March; which first appears to be the letter referred to in one of Neynoe's examinations, as drawn up by Kelly and himself, and brought back to him corrected, as he believed, by the bishop of Rochester.

They likewise find a paper taken in lord North and Grey's study at Catlige, which contains several very extraordinary reasonings on the nature of oaths; tending to prove, that the oaths to the present government are not obligatory; and that though the taking such oaths is in itself unlawful, and a grievous sin, as being inconsistent with prior oaths or obligations; yet neither the taking nor breaking them can in strictness fall under the denomination of perjury.

This is the substance of what the committee have been able to collect from a careful perusal of the papers referred to them, and a long examination of several of the persons concerned; in some of whose power they have reason to believe it was to have made ample discoveries, if they had been disposed to speak the truth.

And though the lords committees cannot reflect, without pity and compassion, on the misguided zeal, and wretched infatuation of those men, who rather chuse to expose themselves to the greatest dangers, than to discover the authors or accomplices of their treasons; thereby declaring to the world, that the leagues and confederacies of private villainy are dearer and more sacred to them than the strongest ties and obligations of society; yet the committee make no doubt but the matters contained in the Report referred to them, and corroborated by the result of their present enquiry, will appear to your lordships so clearly made out, that the conspirators, sooner or later, will have leisure to repent of the rash and impious choice they have made, of being rather true to one another, than to God, their consciences, and their country.*

* March 9. Complaint being made to the House of Lords, "That in a paragraph of the printed Report from the Committee appointed by order of the House of Commons to examine Christopher Layer and others, and to whom several papers and examinations laid before the House, relating to the conspiracy, mentioned in his majesty's speech at the opening the session to be carrying on against his person and government, were referred, the lord Strafford and lord Kinnoul are mentioned in the deposition of Andrew Pancier, that he had been told by one Skeene (now in custody) that the said lords knew of an invasion intended by forces from abroad, and were concerned in the management of the conspiracy here."

On April 24, the House (according to order) took into consideration the Report from the lords committees, to whom the Report and original papers delivered by the House of

And thereupon a motion being made, "That the said Andrew Pancier and —— Skeene be immediately sent for to attend at the bar of this House:" after debate the question was put, That Andrew Pancier and —— Skeene be immediately sent for to attend at the bar of this House." It was resolved in the negative. Content 29. Not content 64.

"Dissentient'

"1. Because the earl of Kinnoul and the earl of Strafford having severally complained to the House, that they find themselves reflected on in a printed deposition of one Andrew Pancier, wherein he deposeth that one Skeene (now in custody) had acquainted him, among other things, that the said earls knew of the late conspiracy, and were concerned in the management of it here; and the said earls alledging, that they did not see by the Report, in which that deposition is found, that the said Skeene, though in the hands of the government, had been so much as questioned touching the said hearsay (which observation we find to be true) we think it highly reasonable to have complied with the motion and request of the said lords, that the said Pancier and Skeene might be examined at the bar of this House in relation to that matter only; the like request, for the better clearing the reputation of any noble lord, when he hath thought it unjustly aspersed, having never been denied, that we know of; but, on the contrary, it was, not not long since, granted in the case of the earl of Sunderland, though the examination which he thought reflected on his honour, was not come into print when he made his complaint; which, according to our judgment, was not so strong a case, for granting the motion, as the present is.

"2. Because the said deposition, as far as it is printed, containing nothing but what one deponent heard another say (except as it contains a charge on Skeene for saying it) we think it was very natural and proper, as well for the advancement of justice, as for the vindication of the noble lords requesting it, to trace the said hearsay, if possible, to the fountain head,

Commons at several conferences were referred; and who were empowered by this House to examine Christopher Layer, and such other persons as they from time to time should think

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or at least so far as to know, from the person charged with relating it, whether he would deny his having related it; or if not, whether he would confess the falsity of what he had so related, or undertake to make it good by his own testimony, or otherwise.

"3. We think there could be no inconvenience in examining, as moved, to find whether there was any, and what foundation for this hearsay; it not being an anticipation of the course of justice (as examining a part of the evidence against any man, or a part of an accusation, would be) since the swearing what one man said of a third person is in no sort evidence, either in law or reason, to support a conviction, or even to ground an accusation upon, in any form whatsoever.

"4. Since a mere hearsay being no evidence in the least degree, cannot be made a foundation for any legal proceeding, it is impossible for any noble lord, whose honour may be affected by it, to hope to clear himself on any trial, or other like opportunity that can be given him to make his defence; and therefore, since there is no other method that we can think of, so proper or effectual, in our opinions, as an examination of the nature of that moved for, we think it ought to have been ordered; and that every noble lord may possibly, in time, be hurt by the consequence of this precedent.

"5. We cannot think that the examining, as moved for, into this hearsay only, could have made any difference with the other House, since it is inconceivable by us, that any number of gentlemen, who may have by accident (for we hope it is no otherwise) in setting forth the deposition of Pancier as a charge against Skeene, happened to asperse the reputation of some of the peers of the realm, could resent either that these lords should desire, or the House permit them to clear themselves as soon and as effectually as possible of that hearsay.——*(Signed,)* Strafford, Aylesford, Poulett, Bristol, Bathurst, Scarsdale, Willoughby de Broke, Litchfield, Fran. Cestriens', Guilford, Anglesea, Foley, Exeter, Cowper, Berkeley of Stratton, Compton, Osborne, Arundell, Craven, Bruce, Hay, Uxbridge, Weston, Bingley."

March 21. Complaint was made to the House by the earls of Scarsdale, Strafford, Cowper; the lords Craven, Gower, Bathurst, and Bingley, That in the examinations of Christopher Layer, in the printed appendixes referred to in the Report from the committee appointed by the House of Commons to examine Christopher Layer and others, it is set forth, That one John Plunkett told him the said Layer, that the said lords were of a club or meeting called, in some of the said Plunkett's letters, Burford's club. The said lords proper: and the said Report being read, it is resolved by the Lords spiritual and temporal in parliament assembled, that this House is fully satisfied and convinced, that a detestable

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severally declared the same to be false and groundless; and

Earl *Cowper* in particular complained, That little regard had been shewn to divers members of that illustrious and noble assembly, whose honour and reputation had been attacked, by being mentioned in the Report from the secret Committee of the House of Commons, being represented, upon mere hearsay, as privy to treasonable designs against the government. That for his own part, as the late queen Anne, of glorious and immortal memory, had thought fit to raise him to the dignity of a peer, how unworthy soever he was of that honour, he thought it a duty incumbent upon him, to defend the rights and privileges of the peerage of England, which they held by the fundamental laws of the land, and were confirmed to them by Magna Charta. That after having, on so many occasions, and in the most difficult times, given undoubted proofs of his hearty zeal and affection for the Protestant succession, and of his attachment to his majesty's person and government, he had just reason to be offended, to see his name bandied about in a list of a chimerical club of disaffected person, printed in the said Report, on the bare hearsay of an infamous person, notoriously guilty of prevarication; and who, in the opinion even of the secret committee, in order to magnify the number of the Pretender's friends, did, in several lists, insert the names of persons as well affected to the Pretender's service, without having the least authority for so doing; which alone was sufficient to give an air of fiction to the whole conspiracy. Hereupon his lordship moved, "That John Plunkett, now in custody, being the person who, Layer says, in one or more of his examinations, told him, that several lords of parliament, therein named, were of a club or meeting called in some of the said John Plunkett's letters, Burford's club, be forthwith brought to the bar of this House, to be examined touching the said matter only."—This motion being seconded,

Lord *Townshend* said, he was extremely sorry to find his lordship should lay so much stress, and so highly resent his being mentioned in the Report; that his lordship's name with several others, being part of an examination, it was absolutely necessary it should be mentioned; that at the same time, the committee had declared, they were entirely satisfied of his lordship's innocence, so that his lordship's reputation could not have suffered upon that account. But, that on the other hand, he was much surprized to find that a noble peer, whose abilities and merit had justly so great weight in that illustrious assembly, should upon a trivial circumstance, ridicule as a fiction, a horrid and execrable conspiracy, supported by so many concurring proofs as amounted to a

and wicked conspiracy has been formed and carried on, for soliciting a foreign force to invade these kingdoms, for raising a rebellion, and inciting insurrections in London, and divers other parts of Great Britain, and even for laying violent hands on the sacred person of his majesty, and on his royal highness the prince of Wales, in order to destroy our religion

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demonstration; and from a false, trifling particular, infer, that no part of it was true.

Lord *Bathurst* answered the lord Townshead, and was supported by the lord Craven, and the earl of Kinoul, who insinuated as if the main drift of the plot was a base contrivance of their enemies, to blast their honour and reputation, and to render the best patriots useless to their country, by making them obnoxious. The earl of Strafford having expressed his just resentment with more warmth than the rest,

Lord *Cadogan* said thereupon, That for his own part, though his name was often mentioned in the Report, he never troubled himself about it; but, in his opinion, there was reason to believe some people were sore, when they winched so much at the least touch.

The Earl of *Strafford* repelled this reflection, with a great deal of vivacity, and said, He was as whole and sound as any in that illustrious assembly; but as he had the honour to have more ancient noble blood running in his veins, than some others, so, he hoped, he might be allowed to express a more than ordinary resentment against insults offered to the peerage.

The motion was negatived by 81 against 26.

"Dissentient'

"And for reasons, we refer to those entered on a protestation made on the 9th day of this instant March, to a Resolution of the like nature: *(Signed,)* Scarsdale, Cowper, Bingley, Bathurst, Dartmouth, Gower, Strafford, Craven, Litchfield, Poulett, Guilford, Montjoy, Weston, Hay, Foley, Aylesford, Compton, Uxbridge, Exeter."

The following Declarations were published about this time.

The Declaration of William Earl Cowper, shewing, that the matters contained in some Hear-says, relating to him, in the Examinations of Christopher Layer, are false and groundless.

"Though hear-say does not affect any one, either in law or reason, yet it deserves contradiction, where the truth will bear it, especially if printed: and therefore finding that Layer in his examinations of the 19th of January and 4th of February last, hath said, that one Plunkett told him, (as explaining what was meant by 'Barford's club') that lord Orrery was chairman; and that lord Cowper, and seven other lords, and six commoners, named, were of that club; and that this club met monthly, as he, Layer, thought, at one another's houses: and not doubting but my averment will be believed before any hear-say, especially from one in Layer's sad circumstances; I do hereby declare and affirm upon my honour, That I do not know, or believe, and never heard before the said examinations were talked of, that there was any such club or meeting: that as to three of the commoners named, viz. sir H. Goring, Mr. Dawkins, and Mr. Shippen, I do not know them so much as by sight: and as for two of the remaining three commoners, viz. sir Constantine Phipps and general Webb, I have not been in their, or either of their companies at any time within sixteen years last past: and as to the lords, I never met them, or any of them, but either accidentally on visits of ceremony, or in the time of parliament, and that with other lords on the business of parliament only: and for one of the said commoners, whom I am acquainted with, viz. Mr. Hutcheson, I never once was at any meeting with him together with any of the said lords or commoners. And whereas Layer in his examination of the 19th of September last, said, That lord Orrery told him that lord Cowper told him (lord Orrery) that 200 tories and 90 grumbletonians, would try their last effort in the House of Commons; and in another examination of the 21st of the same month, Layer repeats the same, except that he uses the words, angry whigs, instead of the word grumbletonians: I do hereby declare, and affirm upon my honour, that I never said so to lord Orrery, nor to that effect, nor any thing like it: and I do therefore verily believe that lord Orrery never said that I did.

"Cowper."

A Declaration signed by Archibald Hutcheson, esq. and given to several of his acquaintance, soon after he had perused the Examination of Christopher Layer in the Appendix to the Report of the Secret Committee, in which Layer has made mention of his name, as one of Burford's Club; which the said Layer, in his Examinations saith, he was told by one Plunkett. March 4, 1722.

"Having read part of the Examination of Layer of the 19th of January and 4th of February last, in the Appendix to the Report of the Secret Committee, in which Layer is mentioned to have said, That one Plunkett told him, as explaining what was meant by 'Burford's club,' that lord Orrery was chairman, and that this club met monthly, at one another's houses, as Layer thought; and that Plunkett told him, That there were eight other lords and six commoners (whose names he mentions; and mine as one of them) of that club; I do hereby declare, upon the honour of a gentleman, That I do not know, or believe, that there was a club or meeting of any of the lords or gentlemen mentioned in the said examination, nor have I ever heard of any meeting where lord Orrery was present, except that which was

and happy constitution, by placing a Popish Pretender on the throne.

Ordered, By the Lords spiritual and temporal in parliament assembled, that the thanks of this House be given by the lord chancellor, to the said lords committees, for their having discharged the trust in them reposed with great exactness, care, fidelity, and candour. Thereupon,

The lord chancellor addressing himself to the Lords of the said committee, gave them the thanks of the House in the following words:

My lords who were of the committee;

I am commanded by the House to give your lordships the thanks of this House, for your having discharged the trust reposed in you with great exactness, care, fidelity and candour.

My lords; The trust was as great as ever was reposed by this House in any of its members. The subject matter of your enquiry, a conspiracy the most dangerous as well as detestable, big with mischiefs of all kinds, and destructive of every thing that is valuable amongst us; carried on and managed in a new devised method with the utmost cunning as well as wickedness, and covered with all the disguises the most artful dexterity could contrive: and which therefore required the greatest penetration and skill to lay open. And the papers, some of them of such a nature, that it was thought fit to refer them to your lordships, locked up as they were, without reading them in the House.

My lords; Your lordships have fully answered the expectations the House entertained, when they pitched upon you for this trust.

Your application in going through so many papers of affected and studied obscurity; your candour and exactness in examining the persons concerned, or any way capable of giving any satisfaction, and in representing what they said; the accuracy and judgment of your remarks, the light you have so happily given to several passages in the Report of the committee of the Commons, which, though in themselves just, were yet liable to cavils, by such as were loth to have the truth found out, give, I dare say, a sensible pleasure to every lord here that has heard your Report read, and finds himself thereby enabled to form a judgment with so entire satisfaction to himself, concerning this abominable work of darkness, which the actors have endeavoured to surround with impenetrable obscurity.

This noble pleasure of seeing the truth, notwithstanding so many contrivances to hide it, and of being thereby enabled to come to right resolutions in a matter of such importance, has very naturally and agreeably broke out into so unanimous a resolution of returning the thanks of this House to your lordships, to whom they so much owe it. And in obedience to their commands, I do, with particular pleasure, give your lordships the thanks of this House, for your having discharged the trust in your lordships reposed with great exactness, care, fidelity, and candour.

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carried on in the two last sessions of parliament, when lord Orrery, and several lords and gentlemen (not mentioned in Layer's examination) met weekly, and I believe with great innocence, dined at one another's houses; and I do further affirm, That even on accidental visits, I have seldom met together any two of the lords and commoners so mentioned in Layer's examination: that there are two of these commoners (sir Henry Goring and Mr. Dawkins) whose faces I do not know; and two others (general Webb and sir Constantine Phipps) between whom and me there hath not been for fifteen years last passed, the intercourse even of ceremonial visits; and between me and the fifth commoner (Mr. Shippen) but very seldom: that there are three of those lords (Scarsdale, Craven, Gower) with whom I have very little acquaintance; a fourth (lord Bingley) whom I have never met any where but in visits to others; or in public places; and a fifth (the bishop of Rochester) in whose company I have been but twice in three years time. I mention this to shew the notorious falshood of Layer's hearsay evidence of 'Burford's club,' an appellation I never heard of until some time after the appointment of the Secret Committee. ARCH. HUTCHESSON."

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PROCEEDINGS AS TO PLUNKETT.

On the 5th of April the Bill against Plunkett was brought up from the Commons, was read a first time, and ordered to be read a second time on the 26th. It was also ordered, that a copy of it should be forthwith sent to Plunkett; that he should be allowed pen, ink, and paper; that it should be intimated to him, that upon application to the House, he might have counsel and a solicitor assigned to assist in his defence; and that he should be brought to the bar on the 26th.

On the 8th, the lord chancellor acquainted the House, "That he had received a letter, subscribed Jos. Plunkett,* signifying, That intimation was given him, on Friday night last, that upon application to the House, he may have counsel and solicitor assigned him; for which he returns his hearty thanks to the House of Peers: and as he has not wherewith to fee a counsel, he desires to have Mr. Thidam, in Elm-court, in the Temple, or Mr. Barnard Carrol, near the Library, as a solicitor, to come to receive his instructions in private, and leave to summon such witnesses as he shall find necessary, and advise with counsel, if need be."

It is ordered, That the said —— Thidam be, and is hereby, assigned solicitor for the said Plunkett accordingly.

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* So in the printed Journal.

The House being moved, "That John Plunkett be forthwith committed to the Tower of London:"

And a question being stated thereupon: after debate;

The previous question was put, "Whether the said question shall be now put,"—It was resolved in the negative.

On the 10th, certain witnesses on behalf of the Bill against Plunkett, were ordered to attend.

On the 22nd a petition of John Plunkett, prisoner in the Tower, complaining that certain monies were taken from him at the time of his being searched. This petition was ordered to lie on the table.

On the next day lord viscount Townshend acquainted the House, "That he and the lord Carteret had made inquiry into the matter of the complaint contained in the petition of John Plunkett, which was yesterday ordered to lie on the table."

And it appearing to the House, "That an accompt was kept of the money found in the said Plunkett's possession when first taken into custody; and that the same is returned to him; and would have been so sooner, had he made application for it:" and thereupon it was ordered that the said petition should be rejected.

On the 24th, Plunkett presented a petition praying that the second reading of the Bill against him might be postponed, as counsel were unwilling to undertake his defence by reason of the shortness of the time allowed for the same: which petition was rejected.

On the same day, witnesses were ordered to attend on Plunkett's Bill, on the 26th; and the constable of the Tower was ordered to bring Plunkett to the bar on the same day. And order was given for certain regulations respecting the trial.

26th. Certain witnesses were ordered to attend immediately on Plunkett's Bill.

Plunkett was brought to the bar.

The counsel having opened the nature of the Bill, and the evidence to prove the allegations in the preamble thereof; proceeded to the production of their evidence: in the course of which, they offered several extracts out of several original letters written by the king's ministers abroad, and others, to the secretaries of state here, to prove the allegations in the first part of the preamble of the Bill, which recites a detestable conspiracy against his majesty's person and government.

And an objection being made to the reading the said extracts:

The House took into consideration, whether the said extracts should be allowed to be read as evidence.

And it being proposed, "That the original letters might be produced:"

The lord viscount Townshend and the lord Carteret informed the House, "That the said extracts were part of the papers which had been laid before the House of Commons, and delivered by the Commons to this House; and that the original letters from which they were transcribed contained several particulars which it is not consistent with the safety of the public to divulge."

And the same thing was declared concerning the nature of the others, by several of the lords committees, to whom the Report and original papers, delivered by the House of Commons at several conferences, were referred; who informed the House, "That the said original letters had been laid before them."

And the counsel being again called in; and asked, "What other extracts they intended to offer in evidence?"

And informing the House, "They intended not to offer any extracts, but what were attested by the secretaries of state, and are printed in the appendix to the Report of the committee of the House of Commons, appointed to examine Christopher Layer and others:" And then withdrawing:

Some of the said lords committees gave the House an account of their having examined the said extracts with the said original letters; and found the same to agree.

And, after debate, a question was proposed, "That the opinion of the judges be asked, whether extracts out of letters, written by the king's ministers abroad, and others, to the secretaries of state here, attested by the secretaries of state, and examined by the lords of the committee, and found to agree with the originals, offered to be produced to prove the first part of the preamble of the Bill, which recites a detestable conspiracy, for the purposes in the Bill, could be read as evidence in the courts below, in any prosecution against John Plunkett?"

And exception being taken to some words in the said question: and the question being put, "Whether these words, [attested by the secretaries of state, and examined by the lords of the committee, and found to agree with the originals,] shall stand part of the question?"—It was resolved in the affirmative.

Then it was proposed, "That these words," [which originals are yet extant, and remain in the hands of the secretaries of state, but contain particulars which it is not consistent with the safety of the public to divulge, as hath been affirmed to this House by two secretaries of state and the lords committees,] "should be made part of the question."

It was agreed to by the House.

Then the question was put, "That the opinion of the judges be asked, Whether extracts out of letters written by the king's ministers abroad, and others, to the secretaries of state here, attested by the secretaries of state, and examined by the lords of the committee, and found to agree with the originals; which originals are yet extant, and remain in the hands of the secretaries of state, but contain particulars which it is not consistent with the safety of the public to divulge, as hath been affirmed to this House by two secretaries of state and the lords committees, offered to be produced to

prove the first part of the preamble of the Bill, which recites a detestable conspiracy, for the purposes in the Bill, could be read as evidence in the courts below, in any prosecution against John Plunkett?"

And it was resolved in the negative.

"Dissentient. —— Cardigan, Anglesey, Scarsdale, Bruce, Craven, Guilford, Aylesford, Gower, Lechmere, Uxbridge, Poulett, Litchfield, Berkeley of Stratton, Fran. Cestriens', Brooke, Exeter, Foley, Compton, Bathurst, Weston, Dartmouth, Willoughby de Broke, Masham."

Then a motion was made, and the question was put, "Whether the said extracts shall be read, in proof of the allegations in the preamble of the said Bill,"—It was resolved in the affirmative.

"Dissentient. —— Strafford, Scarsdale, Craven, Aylesford, Cardigan, Poulett, Bruce, Uxbridge, Lechmere, Fran. Cestriens', Berkeley of Stratton, Anglesey, Bathurst, Foley, Litchfield, Guilford, Weston, Gower, Compton, Brooke, Dartmouth, Willoughby de Broke, Masham, Exeter.

The counsel for the Bill offered, in farther proof of the conspiracy in general, an examination of Philip Neynoe, since deceased, before some lords of the council.

And an objection being made to the reading thereof; and some proofs being heard concerning the same: and a question being stated, "That the examination of Philip Neynoe, since deceased, before some of the lords of the council, in farther proof of the conspiracy in general, the words following, 'but not taken upon oath, 'nor signed by him,' were proposed to be inserted after the words 'lords of the council,'"

And the question being put, "Whether those words shall be made part of the question,"—It was resolved in the negative.

"Dissentient. —— Strafford, Scarsdale, Anglesey, Cardigan, Aylesford, Bruce, Gower, Foley, Craven, Litchfield, Brooke, Dartmouth, Compton, Poulett, Willoughby de Broke, Fran. Cestriens', Exeter, Masham, Weston, Uxbridge."

Then the question was put, "Whether the examination of Philip Neynoe, since deceased, shall be read in proof of the conspiracy in general,"—It was resolved in the affirmative.

"Dissentient.——Scarsdale, Gower, Cardigan, Anglesey, Strafford, Dartmouth, Aylesford, Brooke, Foley, Bruce, Willoughby de Broke, Exeter, Litchfield, Weston, Poulett, Compton, Masham, Uxbridge, Fran. Cestriens', Craven."

The counsel for the Bill offered in evidence the copies of three letters, which were made up in a packet, and sent enclosed in a letter, dated April 22, 1722, directed, "à Mr. Gordon le fils, banquier à Boulogne;" one directed to Mr. Chivers, dated April 20, 1722, subscribed "T. Jones;" the second to Mr. Musgrave, dated April 20, 1722, subscribed "T. Illington;" and the third to Mr. Jackson, dated April 20, 1722, and subscribed "1378," containing several passages in cypher.

And Robert Clarke and Peter Thouvois were examined, upon oath, as to their taking the said copies from the original letters, which were stopped at the post-office, and when copied, were forwarded as directed.

An objection was made to the reading the said copies.—After debate;

The question was put, "Whether the said copies of the said letters shall be read,"—It was resolved in the affirmative.

April 27. The prisoner was directed to proceed in his defence.

Who alleged, "That he was not heard at the House of Commons against the said Bill; and that therefore the proceedings against him there were irregular;" and prayed, "That Charles Hilton, esq. may be assigned his counsel, to assist him in his defence."

It was ordered, That the said Charles Hilton be assigned the prisoner's counsel, as desired.

Who attending, was called in and acquainted therewith.

And then informed the House, "That he is altogether unacquainted with the merits of the cause; but comes prepared to speak to one point only, viz. that the proceedings in the House of Commons were irregular."

Whereupon the lord chancellor acquainted him, "That if he had any thing else to offer in the prisoner's defence, he might now proceed; but that he was not to object to the proceedings of the House of Commons."

But he acquainted the House, "That he was unprepared to speak to any other point."

The prisoner was directed to proceed: and after a witness on his behalf had been examined, the lord chancellor, by the direction of the House, acquainted the counsel and the prisoner, "That if the prisoner has any observations to make on the evidence produced by the counsel for the Bill, as being weak or not affecting him, he is at liberty to object thereto; and that his solicitor may explain any thing for him, and otherwise assist him: but that it is peremptorily expected he should proceed; and that he is to state what facts he calls witnesses to."

Farther evidence for the prisoner was examined, and the prisoner desiring further time to produce his witnesses, and to remark on the evidence:

And a motion being made, "That the further consideration of the Bill entitled, 'An Act 'to inflict paine and penalties on John Plunkett,' be adjourned till Monday next, at ten o'clock."—It was upon the question, resolved in the negative.

And the prisoner was directed to proceed.

And the prisoner having gone through his evidence, and he and his solicitor having been fully heard, the counsel for the Bill were heard in reply, and examined evidence in support of the character of certain witnesses on behalf of the Bill.

And captain Marcellus Laroon was examined, to prove he advised the prisoner to make his defence in the House of Commons; and offered to write a petition for him for that purpose, and that the prisoner declined it.

Then the said Bill was read a second time, in the presence of the prisoner.

And he being asked, "If he had any thing further to offer?" answered, "That he conceived the said Bill to be too general, and can make no proper defence."

Thereupon the counsel were directed to withdraw; and the prisoner was taken from the bar.

It is ordered, That the said John Plunkett be remanded to the Tower of London.

And it was resolved, That the Bill be read the third time on the 29th; and it was ordered, That the judges do then attend.

On the 29th, the Bill being read a third time,

It is ordered, That the opinion of the judges be asked, "Whether, if John Plunkett shall, after the passing of this Bill, be indicted for the treasons with which he stands charged in this Bill, he can plead this act in bar of such indictment?"

And thereupon the lord chief justice of the court of King's-bench, in the name of all the judges who had consulted together, delivered their unanimous opinion, "That, if the said Bill should pass into a law, he may plead the same in bar of such indictment."

Then a motion was made, and the question was put, "That the opinion of the judges be asked, Whether, if one witness proving an overt act of high treason to be done by John Plunkett, and another witness proving a letter to be his hand, which if written by him, amounts to another overt act of the same treason, make two legal witnesses to prove John Plunkett guilty of high treason."—It was resolved in the negative.

And, after long debate the question was put, "Whether this Bill shall pass,"—It was resolved in the affirmative, by 87 against 54.

"Dissentient.

"1st, Because Bills of this nature, as we conceive, ought not to pass but in case of evident necessity, when the preservation of the state plainly requires it; which we take to be very far from the present case, the conspiracy having been detected so long since, and, the person accused seeming to us very inconsiderable in all respects, and who, from the many gross untruths it now appears he has wrote to his correspondents abroad, must appear to have been an impostor and deceiver even to his own party.

"2dly, Proceedings of this kind, tending to convict and punish, are in their nature, though not form, judicial; and do let the Commons, in effect, into an equal share with the Lords in judicature; which the Lords ought to be very jealous of doing, since the power of judicature is the greatest distinguishing power the Lords have: and there will be little reason to hope that, if Bills of this nature are given way to by the Lords, the Commons will ever bring up impeachments, or make themselves accusers only, when they can act as judges.

"3dly, This Bill, in our opinion, differs materially from the precedents cited for it. As to the case of sir John Fenwick; it is plain, by the preamble of that Bill, that the ground most relied on to justify proceeding against him in that manner was, that there had been two legal witnesses proving the high treason against him; that a Bill was found against him on their evidence, and several times appointed him for a legal trial thereon, in the ordinary course; which he procured to be put off, by undertaking to discover, till one of the evidences withdrew; so that it was solely his own fault that he had not a legal trial by jury: all which circumstances not being in the present case, we take it they are not at all to be compared to one another.

"4thly, As to the acts which passed to detain Counter and others, concerned in the conspiracy to assassinate the late king William, of glorious memory; we conceive, those acts were not in their nature bills of attainder, as this is; but purely to enable the crown to keep them in prison, notwithstanding the laws of liberty: whereas this is a Bill to inflict pains and penalties, and does import a conviction and sentence on the prisoner, not only to lose his liberty, but also all his lands and tenements, goods and chattels; of which he having none, as we believe, we cannot apprehend why it was inserted, and this Bill not drawn on the plan of Counter's, &c. unless it was to make a precedent for such forfeitures in cases of Bills which may hereafter be brought, to convict persons who have great estates, upon evidence which does not come up to what the law in being requires.

"5thly, If there be a defect of legal evidence to prove this man guilty of high treason, such defect always was; and, we think, if Bills of this nature, brought to supply original defects in evidence, do receive countenance, they may become familiar; and then many an innocent person may be reached by them; since it is hard to distinguish, whether that defect proceeds from the cunning and artifice, or from the innocence, of the party.

"6thly, This proceeding by Bill does not, in our opinions, only tend to lay aside the judicial power of the Lords, but even the use of juries, which distinguishes this nation from all its neighbours, and is of the highest value to all who rightly understand the security and other benefits accruing from it: and whatever tends to alter or weaken that great privilege, we think, is an alteration of our constitution for the worse, though it be done by act of parliament;

and if it may be supposed that any of our fundamental laws were set aside by act of parliament, the nation, we apprehend, would not be at all the more comforted from that consideration, that the parliament did it.

"7thly, It is of the essence of natural justice, as we think, but it is most surely the law of the realm, that no person should be tried more than once for the same crime, or twice put in peril of losing his life, liberty or estate: and though we acquiesce in the opinion of the judges, "That, if this Bill pass into a law, Plunket cannot be again prosecuted for the crimes contained in the preamble of the Bill;" yet it is certain that if a Bill of this kind should happen to be rejected by either House of parliament, or by the king, the person accused might be attacked again and again, in like manner, in any subsequent session of parliament, or indicted for the same offence, notwithstanding that either House of Parliament should have found him innocent, and not passed the Bill for that reason: and we conceive it a very great exception to this course of proceeding, that a subject may be condemned and punished, but not acquitted by it.

"8thly, We think it appears in all our history, that the passing Bills of attainder, as this we think in its nature is (except as before is said in cases of absolute and clear necessity), have proved so many blemishes to the reigns in which they passed; and therefore we thought it our duty in time, and before the passing this Bill as a precedent, to give our advice and votes against the passing it, being very unwilling that any thing should pass, which, in our opinions, would in the least derogate from the glory of this reign.

"9thly, We apprehend it to be more for the interest and security of his majesty's government, that Bills of this nature should not pass, than that they should; since persons who think at all cannot but observe, that in this case some things have been received as evidence, which would not have been received in any court of judicature; that precedents of this kind are naturally growing (as we think this goes beyond any other which has happened since the Revolution); and if from such like observations they shall infer, as we cannot but do, that the liberty and property of the subject becomes by such examples in any degree more precarious than they were before, it may cause an abatement of zeal for a government founded on the Revolution, which cannot, as we think, be compensated by any, the good consequences which are hoped for by those who approve this Bill.——*(Signed,)* 'Scarsdale, Craven, Willoughby de Broke, Poulett, Strafford, Foley, Cowper, Berkeley of Stratton, Bathurst, Aylesford, Gower, Anglesey, Bruce, Litchfield, Guilford, Weston, Dartmouth, Hay, Ashburnham, Lechmere, Masham, Cardigan, Brooke, Uxbridge, Exeter, Compton, Bingley, Fran. Cestriens', Osborne, Oxford and Mortimer, Montjoy, Trevor."

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An Act to inflict Pains and Penalties on John Plunkett.

"Whereas in the years 1721, and 1722, a detestable and horrid conspiracy was formed and carried on by divers traitors for invading your majesty's kingdoms with foreign forces, for raising an insurrection and rebellion against your majesty, for seizing the Tower and city of London, and for laying violent hands upon your majesty's most sacred person, and upon his royal highness the prince of Wales, in order to subvert our present happy establishment in church and state, and to place a Popish Pretender on your throne: And whereas for the better concealing and effecting the said conspiracy, divers treasonable correspondences were, within the time aforesaid carried on by letters written in cyphers, cant words and fictitious names; which conspiracy, had not Almighty God in his great mercy disappointed the same, would have deprived your majesty's kingdoms of the enjoyment of their religion, laws and liberties, involved them in blood and ruin, and subjected your people to the bondage and oppression of Romish superstition and arbitrary power; for which execrable treason Christopher Layer hath been indicted, tried, convicted and attainted. And whereas John Plunkett hath been a principal actor in the said horrid and detestable conspiracy, by traitorously consulting and corresponding with divers persons, to raise an insurrection and rebellion against your majesty within this kingdom, and to procure a foreign force to invade the same, with a design to depose your majesty, and to place the Pretender on your throne, by traitorously corresponding with the said Pretender, and by engaging in a most execrable and villainous design of laying violent hands upon the sacred person of your majesty (whom God long preserve). Therefore, to manifest our just abhorrence of so wicked a conspiracy, and our zeal and tender regard for the preservation of your majesty's person and government, and for the Protestant Succession in your majesty's royal family, the solid foundation of our present happiness and future hopes; and to the end that no conspirator may, by any contrivance or practice whatsoever, escape punishment; and that all persons may be by the justice of parliament for ever hereafter deterred from engaging in any traitorous conspiracies or attempts, we your majesty's most dutiful and loyal subjects, the Lords spiritual and temporal and Commons in parliament assembled, do humbly beseech your majesty, that it may be enacted; and be it enacted by the king's most excellent majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons in Parliament assembled, and by the authority of the same, that the said John Plunkett shall be detained and kept in close and safe custody, without bail or mainprize, during the pleasure of his majesty, his heirs and successors, in any gaol or prison within the king-

dom of Great Britain, to the custody of the gaoler or keeper whereof the said John Plunkett shall from time to time be committed, in pursuance of this act, by warrant under the hand and seal of any secretary of state of his majesty, his heirs or successors: which warrant or warrants any secretary of state for the time being is hereby authorized and impowered to make; and that the said John Plunkett shall forfeit to his majesty all his lands, tenements, hereditaments, goods and chattels whatsoever.

"And for more sure detaining the said John Plunkett in safe custody, be it further enacted by the authority aforesaid, that if the said John Plunkett shall break such gaol or prison to which he shall be so committed, or shall escape out of the custody of the person in whose custody he shall be, by virtue of such commitment, that then the said John Plunkett, and all and every person and persons whatsoever, who shall be aiding or assisting the said John Plunkett in breaking such gaol or prison, or in making such escape, as aforesaid; or who shall by force take or rescue the said John Plunkett out of such custody, gaol, or prison, during the continuance of his imprisonment by virtue of this act, being thereof law fully convicted, shall be adjudged guilty of felony, and shall suffer death as in case of felony, without benefit of clergy."

In pursuance of this act, John Plunkett was continued prisoner in the Tower of London.

Proceedings as to Kelly.

The Bill to inflict pains and penalties on George Kelly, alias Johnson, was brought up from the Commons on the 8th of April, and on the same day was read a first time by the Lords. On the next day the House on the prisoner's petition "That sir Constantine Phipps* and Mr. Fazakerly might be allowed to him for his counsel, and Messrs. Hugh Watson and Denis Kelly for his solicitors, and that they might have access to him in private," assigned Phipps and Fazakerly for his counsel, and Watson for his solicitor, with leave of access to him in private.

April 30th being the day appointed for reading the Bill a second time,

Mr. Reeves and Mr. Wearg, having opened the nature of the Bill, and the evidence to prove the allegations in the preamble thereof; offered several extracts of several original letters, written by the king's ministers abroad and others, to the secretaries of state here, to prove the allegations in the first part of the preamble of the Bill, which recites a detestable conspiracy against his majesty's person and government.

And sir Constantine Phipps and Mr. Pratt, who had been substituted for Fazakerly, of counsel with the said Kelly, objecting to the reading the said extracts:

The lord chancellor acquainting them with the Resolution of this House, touching the said extracts the 26th instant, in the proceedings upon the Bill against John Plunkett;

And the same being read, and the counsel against the Bill still objecting to the reading the said extracts, the lord chancellor, by direction of the House, acquainted them, "That their lordships have had full satisfaction of the truth of those extracts, upon another occasion."

And the counsel for the Bill were directed to proceed.

Among other evidence the counsel for the Bill offered the copy of a letter, directed "To Mr. Dumville, an attorney," enclosed in a letter directed, "To Mr. Thomas Wilmore, at Mr. Stokoe's, a bookseller, at Charing Cross," dated "April 27th;" with that of the enclosed, being a copy of O——'s letter to L——, dated "April 27th."

Then Peter Thouvois was examined, upon oath; and proved them to be true copies of the originals, which were stopped at the post-office, and copied, and sent forward as directed.

And Anthony Corbiere and Edward Willes, clerk were sworn, and examined, to prove the said letters truly decyphered.

And the counsel and prisoner objecting to the reading the said copies so decyphered:

It was agreed, that the said copies should be read.

Afterwards John Crawfurd having been examined, to prove that Philip Neynoe was drowned, in endeavouring to make his escape out of the house of a messenger in whose custody he was, and the manner of it;

The counsel for the Bill offered to produce an examination of Philip Neynoe, being an extract made by Mr. Delafaye from three papers; one given in by Philip Neynoe, and the other two being minutes of Neynoe's examination.

And Charles Delafaye, esq. was examined, touching the said extract.

And the said examination being shewn to the lord viscount Townshend and the lord Carteret, in order to their giving satisfaction to the House concerning the same:

And the counsel against the Bill submitting it to the judgment of the House, "Whether the said lords ought not to be examined on oath thereupon:"

And some proceedings being read out of the Journals, touching examinations of lords upon honour or oath:

It was agreed, that the lord viscount Townshend and lord Carteret be examined upon honour,* touching the paper, entitled, "The Examination of Philip Neynoe."

And the lord viscount Townshend and the lord Carteret severally declared upon their ho-

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* See vol. 15, p. 1.

* As to this, see the Examination of the bishop of Oxford upon lord Macclesfield's trial, A. D. 1725, in this volume. According to lord Fortescue (rep. 395) lords Townshend and Carteret were allowed to prove this examination "upon honour" because they acted in their legislative capacity and not in their judicial.

nour, "That the said examination was produced before a committee of council, and there read over to Neynoe; and that he twice acknowledged the same to be true."

And afterwards, the counsel for the prisoner objecting to the reading the said paper:

After debate;

The question was put, "Whether the said extract, entitled, 'The Examination of Philip Neynoe,' shall be read;"

It was resolved in the affirmative. And the paper was read.

On the next day, May 1, the counsel for the Bill concluded their evidence: whereupon the prisoner and his counsel were directed to proceed in his defence. They desired some farther time, but the House having taken into consideration their desire, they were directed to proceed as before.

Then sir Constantine Phipps and Mr Pratt were heard in behalf of Kelly, and proceeded in the examination of their evidence.

May 2nd, the prisoner's counsel proceeded in their evidence, and offering to examine witnesses to prove by circumstances that certain letters which had been read in support of the Bill, were not dictated by the bishop of Rochester to the prisoner, George Kelly; the same was opposed by the counsel for the Bill; and after debate, a motion was made, and the question was put, "That the counsel for the prisoner may be at liberty to proceed, as they desired, to examine witnesses, to prove, by several circumstances, that the letters, dated the 20th of April, 1722, given in evidence for the Bill, were not dictated by the bishop of Rochester to the prisoner George Kelly,"—It was resolved in the negative, by 82 against 47.

"Dissentient.

"1st. Because it was insisted on, by the prisoner's counsel, that the proof desired was necessary to his defence; and, if allowed to be made, would contribute to satisfy the House of the prisoner's innocence of the crimes charged on him by the Bill; for which reason alone, if there was no other, we think the witnesses ought to have been examined; it being in our opinions, against the constant course and rules of justice, in criminal proceeding of all kinds, to preclude the prisoner's defence, by refusing to hear his witnesses, if they are legal and competent; and in derogation of the honour and justice of the House, on this occasion, to anticipate the judgment of the House in the least circumstance, which the prisoner or his counsel insist on to be material to his defence, and, which may, if proved, be of weight in the consideration and judgment of the House.

"2dly. It appears to us to tend directly to prove the guilt or innocence of the prisoner, to discover whether the bishop of Rochester did dictate to the prisoner the letters mentioned in the question; because it was declared to the House, by the counsel for the Bill, in opening the charge against the prisoner, that the letters, though wrote by the prisoner, were dictated to him by a greater person: and although the counsel for the Bill, when called upon, did not think fit to name that greater person; yet, it being suggested in the Report of the House of Commons, communicated to this House, and it being universally supposed hitherto, that the bishop of Rochester did dictate the said letters to the prisoner, it became, in our opinions, incumbent on the prisoner, to give the House what satisfaction he could in that particular, the same being made a circumstance and part of the accusation against him; and, if falsified, or rendered incredible, might influence the judgment of the House in other circumstances.

"3dly. Because the declaration of Philip Neynoe, deceased, though not signed or sworn by him, hath been allowed by the House to be read, and given in evidence, in proof of the particular facts charged on the prisoner in the Bill; in which declaration, the prisoner is expressly charged by the said Neynoe, to have frequently told him, That the bishop of Rochester held correspondences with the Pretender and the Pretender's agents; and that the prisoner was employed by the bishop in writing for him, and carrying on the said correspondencies; and that he had several times left Mr. Kelly at the bishop's door, when Mr. Kelly went into the bishop's house, and staid there an hour or two; and upon coming back to him, that the prisoner made apologies for staying so long, and told him, 'He had been writing the bishop's letters;' which he always apprehended to be the foreign correspondence of the bishop with the Pretender's agents: for which reason also, we conceive the proof desired ought to have been received, because it may be thought a denial of justice by this House to the prisoner, not to permit him to answer, even by legal evidence, the particular and direct evidence which the House hath allowed to be given against him.

"4thly. Although the prisoner may be guilty of a treasonable correspondence, if he wrote the letters mentioned in the question, and the same were not dictated to him by any person whatsoever; yet the facts charged in the Bill having been endeavoured to be proved, not by direct proof of the facts themselves, but by circumstances; in our opinions, the prisoner's defence must be applied to answer the several circumstances: and it is, as we conceive, equally unjust, to deny him the liberty of falsifying that circumstance of his writing the letters, being dictated to him by the bishop, as it would be, to refuse to allow him to prove that the said letters were not, or could not, be wrote or sent to the persons to whom they are suggested, or charged to have been wrote or sent, or to refuse him to prove, by circumstances, that the prisoner himself did not, or could not, write the same at the particular times and places the same are suggested to be so wrote or sent by him; or to deny him liberty to falsify by circumstances any other circumstance relating to the supposed treasonable correspondence charged on him by the Bill.

"5thly. The counsel for the Bill having alleged, as one reason against the examinations desired, 'That they were not prepared to answer that evidence,' might have been a ground for the House to have allowed them a reasonable time for such preparation: But, in our opinions, that consideration ought not to weigh against the prisoner's giving the evidence to the House which he was prepared to give; especially since it was alleged, that the examination now desired was desired on the prisoner's part to have been made at the bar of the House of Commons, and thereby so long ago publicly notified by the prisoner.

"6thly. Because the refusal of the proof of any circumstance of the prisoner's defence, if such refusal be not just, must, in its consequence, affect the justice of this whole proceeding against the prisoner; because it deprives the House of the liberty of forming a judgment upon the whole case, and tends, so far as that particular goes, to subject this proceeding against the prisoner to the objection of partiality, which is most highly dishonourable to this House, especially considering the latitude which hath been allowed in other parts of the examination on this occasion.——Arundell, Salisbury, Gower, Pomfret, Hay, Guilford, Poulett, Northampton, Strafford, Denbigh, Craven, Scarsdale, Litchfield, Wharton, Stawell, Anglesey, Cardigan, Cowper, Bathurst, Trevor, Fran. Cestriens', Osborne, Foley, Masham, Compton, Bruce, Montjoy, Willoughby de Broke, Lechmere, Brooke, Dartmouth, Leigh, Bingley, Aylesford, Berkeley of Stratton, Uxbridge, Middleton, Tadcaster, Ashburnham, Exeter, Weston."

Then after examining other evidence, the counsel for the prisoner Kelly summed up the evidence, and the prisoner was brought to the bar, and heard in his own defence.

And Mr. Reeves, for the Bill, was heard in reply.

Then some other examination of evidence took place, in the course of which the character of one Edmund Bingley came in question; as to which Mr. Baron Gilbert being present in the House, and being asked, gave an account of the said proceedings, and the conviction of the said Bingley, and judgment against him upon two indictments, one for publishing a seditious libel, and the other for treasonable words; but the Journal does not state that Mr. Baron Gilbert was sworn.

The counsel for the Bill offered to read in evidence a letter, dated March 20, 1723, directed "A monsieur Gordon, banquier à Boulogne," with a draught enclosed in the same, of an affidavit desired to be sworn in France, and to be sent over hither. And the counsel for the prisoner objecting thereto:

After debate, the question being put, "Whether the said letter and draught enclosed, be read in evidence,"—It was resolved in the affirmative.

And the said letter and draught enclosed were read.

And the counsel for the prisoner desiring, "That some lords in his majesty's service would be pleased to give the House an account of what advices they had received, from any of his majesty's ministers in France, relating to the prisoner's procuring a dog at Paris, for some person here:"

The lord Carteret gave the House an account, "That he had received a letter concerning the same, from his majesty's minister at Paris."

And the said letter was read: as also an affidavit of Michael Brimagen, relating to the same matter.

Mr. Wearg was heard in reply.

Then the bill was read a second time, in the presence of the counsel and prisoner.

And the prisoner being asked, "If he had any thing further to offer?" and answering, "He had not:" the counsel were ordered to withdraw; and the prisoner was taken from the bar.

May 3. The Bill being read a third time, a proviso by way of rider, to be added to the said Bill, to allow the said George Kelly, alias Johnson, to depart his majesty's dominions, on giving security not to return again without licence, was offered to the House, and read.

And a motion being made, and the question being put, "Whether the said rider shall be read a second time,"—It was resolved in the negative, 83 against 38.

"Dissentient. —— Osborne, Anglesey, Craven, Guilford, Middleton, Northampton, Stawell, Fran. Cestriens', Scarsdale, Trevor, Bathurst, Gower, Strafford, Aylesford, Salisbury, Poulett, Bruce, Ashburnham, Dartmouth, Weston, Masham, Hay, Litchfield, Foley, Brooke, Exeter, Compton, Berkeley of Stratton, Uxbridge, Arundell, Cardigan, Montjoy, Willoughby Br., Bingley."

Then the question was put, "Whether the said Bill shall pass,"—It was resolved in the affirmative, 79 against 41.

Dissentient.

"1st, Because we think there is no reason for the legislature to pass a law *ex poste facto*, to punish this person for the treasonable correspondence he is accused of; he being in custody, and may be brought to a legal trial in one of the courts of justice.

"2ndly, We conceive the want or defect of such clear and plain evidence, as by the laws of this kingdom is required, to convict any person of high treason, no sufficient reason to warrant the exercise of the legislative power, in making a new law for his punishment; because such laws being made for the protection of innocent persons from suffering by false, uncertain, or doubtful evidence, every subject is entitled to the benefit of those laws, when he shall fall under an accusation of high treason.

"3rdly, Because, as we conceive, by the rules of natural justice, laws ought to be first made as directions for men's actions and obedience, and punishment inflicted for putting those laws in execution against offenders; and that therefore punishing by a law made after the offence committed is not agreeable to reason or justice, except only in the case of real and apparent necessity, to prevent the immediate ruin of a government; which we do not think to be the present case, or can bear any resemblance to it.

"4thly, Because the proceedings of the legislative power in making laws, can be governed by no rule but that of their own discretion and pleasure; and therefore the making laws to inflict pains and penalties on particular persons must, as we conceive, tend to expose the lives, liberties and properties, of the subjects to an arbitrary discretion, and consequently render them precarious in the enjoyment of those blessings, which, by our excellent constitution and government, they have always had an uncontroulable right to hold and enjoy, till forfeited for some crime, and the person offending legally convicted thereof upon such full and positive proof as the laws of this kingdom do require.

"5thly, Because, as we conceive, it would be of dangerous consequence to the safety of innocent persons, to allow copies of letters, taken by the clerks of the post-office, though sworn by them to be true copies, to be given in evidence against any person accused of high treason, especially when such copies are not compared with the originals after they are taken, and the original letters forwarded on by them, and not produced; because the originals not being produced, such person is deprived of an opportunity of falsifying those copies; and though there should be any mistake committed by the clerk in copying, whether wilfully or by negligence, such mistake cannot be detected, for want of the original writings to compare the copies with.

"6thly, Because the proof of letters, or other writing, in criminal prosecutions, by similitude and comparison of hands, being, as we conceive, a very slight and weak evidence, because hands may be too easily counterfeited, and the persons examined cannot speak positively but to their belief, and therefore not liable to be prosecuted for perjury, hath, as we conceive, very justly been discouraged, in such times when the administration of justice hath been most impartial; and convictions of high treason, grounded on such evidence, have been reversed by act of parliament, for that and other reasons.

Pomfret, Stawell, Northampton, Anglesey, Fran. Cestrieus', Scarsdale, Craven, Strafford, Denbigh, Guilford, Wharton, Middleton, Poulett, Aylesford, Dartmouth, Bathurst, Litchfield, Salisbury, Brooke, Gower, Weston, Osborne, Hay, Berkeley of Stratton, Compton, Bruce, Foley, Uxbridge, Masham, Trevor, Cardigan, Arundell, Montjoy, Willoughby de Broke, Exeter, Ashburnham, Bingley, Tadcaster."

An Act to inflict Pains and Penalties on George Kelly alias Johnson.

"Whereas in the years 1721 and 1722, a detestable and horrid conspiracy was formed and carried on by divers traitors for invading your majesty's kingdoms with foreign forces, for raising an insurrection and rebellion against your majesty, for seizing the Tower and city of London, and for laying violent hands upon your majesty's most sacred person, and upon his royal highness the prince of Wales, in order to subvert our present happy establishment in church and state, and to place a popish Pretender on your throne: and whereas for the better concealing and effecting the said conspiracy, divers treasonable correspondences were, within the time aforesaid, carried on by letters written in cyphers, cant-words, and fictitious names; which conspiracy, had not Almighty God in his great mercy disappointed the same, would have deprived your majesty's kingdoms of the enjoyment of their religion, laws and liberties, involved them in blood and ruin, and subjected your people to the bondage and oppression of Romish superstition and arbitrary power: for which execrable treason Christopher Layer hath been indicted, tried, convicted, and attainted. And whereas George Kelly alias Johnson, hath been a principal actor in the said horrid and detestable conspiracy, by traitorously consulting and corresponding with divers persons to procure a foreign force to invade this kingdom, and to raise an insurrection and rebellion against your majesty within the same, with design to depose your majesty, and place the Pretender on your throne; for treasonable practices in which conspiracy the said George Kelly alias Johnson, being arrested, and divers papers then found about him seized, in pursuance of a warrant under the hand and seal of one of your majesty's principal secretaries of state, for seizing and apprehending him the said George Kelly alias Johnson, together with his papers, and the said George Kelly alias Johnson, being in custody of a messenger by virtue of the said warrant, did, by force and violence, with a drawn sword, make an assault upon, and resist the said messenger, with intent to destroy the said papers, and did burn the same: therefore to manifest our just abhorrence of so wicked and abominable conspiracy, and our zeal and tender regard for the preservation of your majesty's person and government, and of the Protestant Succession in your majesty's royal family, the solid foundation of our present happiness and future hopes; and to the end that no conspirator may, by any contrivance or practice whatsoever, escape punishment, and that all persons may by the justice of parliament be for ever hereafter deterred from engaging in any traiterous conspiracies or attempts, we

your majesty's most dutiful and loyal subjects, the Lords spiritual and temporal, and Commons in parliament assembled, do humbly beseech your majesty, that it may be enacted; and be it enacted by the king's most excellent majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons in parliament assembled, and by the authority of the same, that the said George Kelly alias Johnson shall be detained and kept in close and safe custody, without bail or main-prize, and during the pleasure of his majesty, his heirs and successors, in any gaol or prison within the kingdom of Great Britain; to the custody of the gaoler or keeper whereof the said George Kelly alias Johnson shall from time to time be committed, in pursuance of this act, by warrant under the hand and seal of any secretary of state of his majesty, his heirs or successors: which warrant or warrants any secretary of state for the time being, is hereby authorized and empowered to make; and that the said George Kelly alias Johnson shall forfeit to his majesty, all his lands, tenements, hereditaments, goods and chattels whatsoever.

"And for the more sure detaining the said George Kelly alias Johnson in safe custody, be it further enacted by the authority aforesaid, that if the said George Kelly alias Johnson shall break the gaol or prison to which he shall be so committed, or shall escape out of the custody of the person in whose custody he shall be by virtue of such commitment, that then the said George Kelly alias Johnson, and all and every person and persons whatsoever, who shall be aiding or assisting the said George Kelly alias Johnson in breaking such gaol or prison, or in making such escape, as aforesaid, or who shall by force take or rescue the said George Kelly alias Johnson out of such custody, gaol, or prison, during the continuance of his imprisonment by virtue of this act, being thereof lawfully convicted, shall be judged guilty of felony, and shall suffer death as in case of felony, without benefit of clergy."

In pursuance of this Act, George Kelly was continued prisoner in the Tower of London.

THE FOLLOWING IS THE SPEECH WHICH KELLY DELIVERED IN HIS DEFENCE AT THE BAR OF THE HOUSE OF LORDS ON THE 2ND OF MAY, 1723.

"My lords; Since my counsel have so fully answered every article alleged against me, it may seem unnecessary to take up your lordships' time by saying any thing for myself. And, indeed, it would be so, if my charge were ordinary or particular. But, my lords, I have been represented as a person doubly guilty: first, in transacting treason for myself: and, secondly, in doing it for other people. These are crimes of the most heinous nature; and if they were as clearly proved, as they have been strongly asserted, I should justly merit your lordships' highest displeasure, and all the pains and penalties you could possibly inflict upon me.

"And since my charge is so very extraordinary; since these proceedings seem to be without any precedent; and, that the innocence of other persons calls upon me for public justice; I believe your lordships will easily allow, that to be silent in such a case would be truly criminal, and too justly censured.

"To enter into all the particulars of my accusation, would take up more time than is reasonable for me to ask, or for your lordships to allow: and though the many inconsistencies, contradictions, and false conclusions which appear in almost every page of the printed reports, plainly shew the weakness, absurdity and sophistry of them; however, I shall only beg leave to touch upon those material parts which relate to myself, and my defence to them.

"The first article which I find myself charged with, is, the employing of one Neynoe to draw up three memorials to the regent of France, to solicit foreign forces to invade this kingdom. And for proof of this, the examinations of the same person, which are neither upon oath, nor so much as signed by him, (and whom the committee of the honourable House of Commons have represented as a very infamous fellow) are the only evidence assigned against me.

This, my lords, is the crime! and this the proof!

"And though the bare mentioning of it might be sufficient to convince your lordships of its weakness, however, since so great a weight has been laid upon this kind of evidence in another place, it will be necessary to be a little more particular about it.

"The two first of these memorials, (viz. those before and after the South-Sea Scheme) are but slightly mentioned: but the one pretended to be drawn up in December 1721, (and containing a demand of 5,000 men) and a letter said to be written the March after (to amuse the government into a false security) are the chief things upon which any stress is laid. And how false both these allegations are, has evidently appeared to your lordships. For, had my accuser been really employed to draw up any such memorials, it is reasonable to believe, that he would have copies of some, and especially of the last of them; since a person who turned informer so suddenly after, may very well be presumed to have had thoughts of it for some time before; and such papers would, no doubt, give great weight to his information. But the ministry have produced no such copies; neither do they pretend to have them: which is a very great indication, that there never were any such memorials at all.

"Besides, there are no two of his examinations of a piece. Nay! he contradicts himself in almost every one of them. For in his second examination he says, that these memorials were all drawn up by the order of one

Henry Watson (whom he really did not know, but took to be the late earl marshal) without making the least mention of me. In his third examination he says, they were delivered to me and Watson; and in his fourth, he says again, they were all drawn up by the order of Henry Watson only. And in a few lines after contradicts himself, and says, that the heads of them were given to him by me and Watson: which are such inconsistencies, as (your lordships will easily grant) are not to be reconciled: and if his memorials were no better drawn than his examinations, I believe they were not likely to meet with any great success.

"As to the earl marshal, how reasonable it is to believe, that a person in his circumstances should venture to come into England, and live so openly here, as to entrust himself, and a secret of this nature, to a fellow, who (by his own confession) did not know him, is humbly submitted to your lordships. And as for my part, it is very plain that I could have no hand in them, since the minutes in my pocket-book (in which I could have used no disguise), agreeing with the concurrent testimony of several witnesses, plainly shew, that I was not in the kingdom at the times in which my accuser pretends to have been so employed. For, by those minutes, and their testimony, it appears, that I went to France the 23rd of November, 1721, and did not return till the latter end of the next month: and my accuser himself owns in his first examination, that he did not see me after my return, till the January following; which makes it impossible that he could have been so employed by me in December, since I was most part of that month out of the kingdom; and the few days of it that I was here, he owns he did not see me.

"Nor has the other part of his information, relating to the letter (which he pretends to have drawn up in March) better grounds—For, by the same minutes, and by the same evidence, it likewise appears, that I went to France the 22nd of February after, and did not return till the middle of April; which makes it as impossible that he could have been employed by me in March, since I was then likewise out of the kingdom. Had this examination been at any distance of time, it is possible he might be mistaken in it: but his first information must have been about the middle of April, soon after my return from France; for he confessed to the person taken up with him at Deal, that he was the first who set the ministry upon intercepting letters. And the first letters so intercepted are owned, in the 42nd page of the Report made to the Lower House, to have been the 22nd of April, 1722.—And, surely, he cannot be supposed to have forgot so soon what happened the very month before; especially since he has been so particular, as to name the very day (Saturday) upon which he says this letter was so drawn up. By all which it plainly appears, that this article is not only groundless, but evidently false; and likewise, that he had no such intimacy with me (as the Report pretends), since he has declared, that I never spoke to him of the conspiracy; and that I could be a month at one time, and two months at another, out of the town, without his knowing any thing of it. As to what is said of his coming sometimes to my lodgings, I believe it may be true; but it has been fully proved, that his visits were never to me, but always to another person who lodged in the same house. And I do solemnly affirm to your lordships, that I never was acquainted with the late earl marshal, or with any such person who went by the name of Watson: that I knew very little of my accuser; so little, that I am confident I never spoke to him ten times in my life, nor ever employed him in this or any other affair whatsoever.

"The second Article charged upon me, is, the carrying on a treasonable correspondence for the bishop of Rochester. And for proof of this, the examination of the same person is the only evidence produced against me; wherein he says, That I frequently told him, the bishop was concerned in such a correspondence; and that I managed it for him; with other particulars not worth mentioning. How reasonable it is, that I should tell such a strange untruth to a person that I knew so very little of, and what credit ought to be given to his bare assertion, who has affirmed such gross and notorious falsehoods in the former Article, must be submitted to your lordships. And, in my present unhappy situation, I cannot but think it a very great and singular happiness, to have so public and honourable an occasion of purging myself from so vile a calumny, and of doing justice to that most worthy and learned prelate.

"And I do solemnly declare to your lordships upon the faith of a Christian, That I never wrote or received a letter of any kind for the bishop of Rochester, or was privy to any correspondence of his at home or abroad: that I never shewed him any letter that ever I wrote to France, or ever sent one there by his privity or direction: that I am very little known to his lordship, went very rarely to wait upon him; so rarely, that I am confident few of his servants know either my name or face; and I have not seen him above three or four times these two years past, and not above eight or ten times in my whole life.

"I do farther declare, that my visits to his lordship were always public; that I never went privately in a chair to his house; always found other company with him, who were generally strangers to me; and never once mentioned his name, upon this or any other account, to the person who thus accused me; which, with the evidence that has been produced of his own confessions to that purpose, is, I hope, sufficient to convince your lordships of the truth of it.

"And as for the dog, which has been brought as a circumstance to prove this matter, I do in the same solemn manner declare, that he was given to me by a surgeon at Paris, whose affidavit has been offered to be produced, and who, at

that time, I do verily believe, never heard of his lordship's name; and that he never was designed for any body but the person I gave him to. And I appeal to the very ministers themselves, if the British resident at Paris (who is constantly attended by that very surgeon, and examined him about it) has not confirmed the truth of this account to them. I do farther affirm, that the bishop of Rochester never saw him; never received any letter or message by me, nor (do I believe) by any other person about him: neither did I ever know or hear, that his lordship had any intercourse or correspondence with the late earl of Marr, or any other disaffected person abroad.

"My lords; It cannot be imagined, that I have any particular interest or concern in this matter; for I never received any favours from his lordship, neither do I owe him any obligations but those of common justice; and those I should perform, where I have so much truth of my side, to the greatest enemy I have upon earth. As for the other circumstances, which are brought to strengthen my accuser's examinations, and are set forth in one Pancier's deposition, they will appear, I don't doubt, as groundless and inconsistent as the examinations themselves. For this person swears, that another told him of this conspiracy; that six or eight battalions of Irish forces were to come from Spain to assist the conspirators; that 200,000*l.* were raised, and 800 men regularly subsisted for this purpose in London. These, my lords, are called, in the 38th page of the Report of the Lower House, the concurrent and corroborating proofs of my accuser's examinations: and I humbly appeal to your lordships, if any one of them carries the least colour of reason or probability with it. For can it be imagined, that such a force should come from Spain, when there appears to be so strict a friendship between the two kingdoms? Or that 200,000*l.* could possibly be raised among all the disaffected in England, in case there was a licence for it? Or 800 men regularly subsisted in this city, without a discovery? These are such idle, inconsistent tales, as (I am persuaded) can never have any weight with your lordships. Besides, my lords, this is only bare hear-say; and if the hear-say of such infamous persons (or, indeed, of any persons) be looked upon as sufficient evidence, I believe no man in England can be sure of his life or liberty an hour, since any two people may talk him into high-treason whenever they please; and the greater the person is, the greater his danger always will be.

"The third crime which I stand charged with, is, the writing of three treasonable letters for the bishop of Rochester, supposed to be to the Pretender, the late earl of Marr, and general Dillon; which letters are said to have been sent by me to Mr. Gordon at Boulogne, with directions to be delivered to one Mr. Talbot: and for proof of this, the clerks of the post-office are produced, who swear, that those letters were (to the best of their knowledge) written in the same hand with an original which was stopt as a specimen of it: which original has been sworn by two persons to be my writing, and consequently those letters must be so too.

"My lords; these letters are dated the 20th of April, and the specimen so stopt the 20th of August, just four months after. And how it is possible for people (who receive such a number of letters) to swear to a likeness of hands, at such a distance of time; and what weight ought to be laid upon this kind of evidence; or upon that modern and mysterious one given by the decypherers, in which they don't pretend to a certainty themselves, must be submitted to your lordships. And as to the persons who have sworn to my hand, I hope it will be considered, that one of them is a messenger, who never saw any of my writing but the superscriptions of a few letters, which (your lordships may easily see) do not bear the least likeness with what he has sworn to. Besides, this very person was turned out of his employment upon my account; and a few days after he gave this evidence in the House of Commons, I saw a paragraph in the newspapers that he was restored to it again. And as to the other, it is to be hoped, that it will be likewise considered, that he is a servant who attended me only about three weeks, and was turned off for an infamous action, which he has acknowledged himself to have been guilty of: besides, he has confessed, that he never saw me write, but as he went backwards and forwards in the room; and at such a distance as not to be able to distinguish one character from another: and it has been proved by two witnesses, (one of which was a particular friend of his own) that he declared he never knew any thing of my hand; but was threatened by the secretary, into the affidavit which has been printed in the Appendix. And if that paper had been my writing, it is impossible they could be reduced to a necessity of making use of such improper evidence, since no pains have been spared to procure better; since numbers of people have been taken up, confined and examined to this very point, and Newgate sent to, more than once, for witnesses to it. And though it might be proved by the very Report of the Lower House, that those letters could not have come from the bishop of Rochester; however, my business is only to convince your lordships, that I was not the writer of them; and of this, I believe it is impossible to give clearer proofs than I have done: for if those letters had been dictated to me the 20th of April (as the Report pretends) it must have been at his lordship's house in the country; since it appears by the deposition of his coachman, that he went there the 12th of that month, and did not leave it till the 5th of May.

"But it has been proved, that I was in London all that time; and if it had been permitted, there is not a person in the bishop's family but would testify, that I was not then at his house in the country: and consequently could not have written any such letters for him.

Besides, I have brought several persons of credit and undoubted characters, who have all testified, that the hand in which those letters are said to be written, is not mine, nor any thing like it.

"An affidavit has been produced from Mr. Gordon, that he never received any such letters from me, nor ever had any correspondence, or even an acquaintance with me.

"And it has been likewise proved, that Mr. Talbot, to whom those letters are said to be delivered by Mr. Gordon, was in this town the very day upon which they are said to have been delivered to him at Boulogne: And if I had any such letters to transmit, can it be imagined that I would trust them to the common post, when I had so good an opportunity to send them by, or direct them to Boulogne, when the same post might as well have carried them to Paris? These are such full, such evident proofs, as, I hope, cannot fail of giving your lordships the utmost conviction in this matter; and, consequently, that this Article is, like the rest, both groundless and manifestly false.

"But if any credit is to be given to the confessions which my accuser made to the person taken up with him, it is very plain that those letters must have come from another quarter; and to say no worse, were at least calculated to carry on his own base and villainous designs.

"For it has been proved to your lordships, that he confessed to have been employed by one of the ministers; received 300*l.* from him, and was to have 2,000*l.* more. That this minister declared a personal prejudice, upon some private account, to the bishop of Rochester; was resolved to pull down the pride of that haughty prelate, and to squeeze me (as I think the expressions were) to that purpose.

"My lords; I say, if any credit is to be given to this confession, there can be no great difficulty in tracing out the source of this part of the conspiracy; and I am heartily sorry to say, that there are some circumstances which seem to give but too great a countenance to the truth of it. For, my lords, he made this confession at a juncture, when he may very well be supposed to have spoken in the sincerity of his heart; when he saw his villainy detected; believed himself to be in the greatest danger, and depended upon the person's assistance (to whom he made it) to help him out of his misfortunes.—And how particular this prosecution is, and how sufficiently I have been squeezed, are things but too visible, and too well known to the world.

"Besides, the very cypher by which those letters were written, (and which he owned to have received from that minister) was actually caught upon the person to whom he gave it; and he confessed, that he put a paper of directions into one of my drawers, by which (the Report says) most of the treasonable letters were addressed. And it has been proved to your lordships, that those drawers were constantly open, and that he made some pretext for being alone in my lodgings, the very night before I was first taken up. And since he was the first that set the ministry upon intercepting letters which he said were mine; it is very extraordinary, that such a material part of his evidence should be omitted in his examination; or that the very first letters so intercepted, should be those alleged against the bishop of Rochester. And if the originals of those three letters were stopt, I don't at all doubt, but they might be proved to be my accuser's own handwriting. And how strong a sense he had of his guilt, by attempting an escape which proved fatal to him; and how visibly the hand of God has interposed in that eminent prelate's favour, by taking one of the persons (designed for his destruction) out of the world, and giving the other grace and virtue enough to withstand all temptations to his prejudice, are things highly worthy of your lordships' just and most serious consideration, and no small indication of his innocence. And as to the money which my accuser owned to have received, that there was a very sudden and extraordinary change in his condition; that from the lowest state of poverty and want, he soon arrived to that of a vicious and most profligate affluence, is a truth sufficiently known to all those who were acquainted with him. But from whence this change proceeded, or what real grounds he had for aspersing that honourable person, I will not pretend to say: But if those aspersions be false (as I wish they may) it may be justly inferred, that a fellow who was capable of vilifying one person, may very well be judged as capable of doing so to another: And if his veracity is not to hold good in one case, there can be no reason for allowing it in the other.

"The fourth crime alleged against me, is a number of intercepted letters, supposed to be written to, and received from the late earl of Marr, general Dillon, and other disaffected persons abroad. And for proof of this a Frenchman has been produced, who swears, that he once saw me take up a letter at Burton's coffee-house, by the name of Baker, which name (it is said) some of the treasonable letters were addressed by; and was, in a paper of directions, found in my lodgings.—How that paper came there, has been already proved; and as to the person who has sworn to this particular, I must observe, that when he gave this evidence to the House of Commons, he did not know me, though he spoke to me, and looked several times earnestly at me: and for the truth of this, I can appeal to most of the members of that honourable House, who were witnesses of it; and he would still have probably continued in his ignorance, if some private hints (as I have been told) were not given him, or the same method taken which has been done with a number of other strange fellows, who were frequently sent to the Tower, and had no other business but to take a view of me. Besides, the people of the coffee-house have testified the contrary, and that no such letter ever came to

their house. And though it be set down in my examination before the council, that I confessed to have taken up such a letter, I humbly appeal to my lord chancellor (if it can be worth his lordship's while to recollect it) if he did not ask me that very question two or three times? and if I did not as often deny it? Neither is this the only particular that is falsely set down in that examination. And I do solemnly affirm to your lordships, that I never did receive any such letter, nor ever saw that paper of directions, till it was printed in the Report. And there is one circumstance pretty remarkable in this correspondence, that as it began with my accuser's information, so it ended with his being taken up. For immediately after a new correspondence is pretended to be discovered, and to fix this likewise upon me, it has been suggested, that I sent cyphers by sir Harry Goring to France, and had letters directed by them to Sturges's and Slaughter's coffee-house.

"But my lords, no such cyphers were found in my custody, nor any papers relating to such a correspondence: and the people of those coffee-houses have all sworn, that I never ordered any letters of that kind to be taken in, or received one, either by my own or any other name from them. Nay! one of them has sworn, that no such letters ever came to his house at all; and the other says, that a messenger from the secretary's office was the only person that ever called at his house for those directed to it.

"As to the printed examination of one Mr. Carryl to this purpose, it were to be wished, that this gentleman's reasons had been published, as well as his accusation. For I am confident he will not pretend to say, that he ever saw me write a line in his life, or give a piece of paper of any kind to sir Harry Goring; and what reason he could have for believing that we settled a key for such a correspondence, is very extraordinary: nor have the other particulars which he has affirmed the least foundation of truth; for I do solemnly aver, that I never saw Sample in my life, or gave captain Bonin any such letter of recommendation; neither had I ever the honour of speaking to my lord North and Grey, or of being any ways known to his lordship: and that I should mention him so familiarly by the fictitious name of Johnson, (and which of all names I should never make use of in that manner) will, I hope, appear very incredible to your lordships; especially since Mr. Carryl himself has furnished so good a reason for the disbelief of it.

"For he has likewise affirmed, that my examination before the council was read at Dr. Yalden's house: the doctor has, indeed, already done me justice in that point;[9] and Mr. Tucker, who was all the while in company, will, I am very sure, do the same. And since Mr. Carryl appears to be so plainly mistaken in this particular, surely he may very well be supposed to be so in all the rest; especially since he has not assigned the least reason for any of them.

"As to the rest of the intercepted letters, the people of the several coffee-houses have likewise cleared me from them; and all testify, that they never delivered me any such letters, or received any directions from me about them; which I hope will be sufficient to convince your lordships, that I was not concerned in any such correspondence; especially since no letters of this kind were found in my possession, nor any other papers relating to the conspiracy.

"There are two other crimes, in which I most humbly crave your lordships' patience to be heard, because they are the blackest that can be imagined, and seem to be personal. The first is a letter directed to Mr. Gordon at Boulogne, with two affidavits, which have been printed, and are suggested to be sent by my directions, in order to have him and one Birmingham perjure themselves upon my account: for in this letter it is said, That the inclosed is a copy of a note from the person concerned, with what he thinks requisite.

"My lords; this letter is dated the 20th of March, at which time, and for five months before, I never was allowed the use of pen, ink, or paper, or the liberty of seeing any person that could possibly have conveyed such a note

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[9] Johnson's Jacobitism thus sneeringly adverts to Yalden's concern in these transactions:

"Yalden seems to have led a quiet and inoffensive life, till the clamour was raised about Atterbury's plot. Every loyal eye was on the watch for abettors or partakers of the horrid conspiracy, and Dr. Yalden, having some acquaintance with the bishop, and being familiarly conversant with Kelly his secretary, fell under suspicion, and was taken into custody.

"Upon his examination he was charged with a dangerous correspondence with Kelly. The correspondence he acknowledged; but maintained, that it had no treasonable tendency. His papers were seized, but nothing was found that could fix a crime upon him, except two words in his pocket-book, 'thorough-'paced doctrine.' This expression the imagination of his examiners had impregnated with treason, and the doctor was enjoined to explain them. Thus pressed, he told them that the words had lain unheeded in his pocket-book from the time of queen Anne, and that he was ashamed to give an account of them; but the truth was, that he had gratified his curiosity one day, by hearing Daniel Burgess in the pulpit, and those words was a memorial hint of a remarkable sentence, by which he warned his congregation to beware of thorough-paced doctrine, 'that doctrine, which, coming in at 'one ear, paces through the head, and goes out 'at the other.'

"Nothing more than this appearing in his papers, and no evidence arising against him, he was set at liberty." Life of Yalden.

for me; for I have been guarded in a different manner from other people in the Tower: my warders were put into the very room with me, and ordered never to stir a moment, night or day, out of it; which orders they punctually obeyed, and were constant witnesses to all my actions.

"And those warders will depose, that they believe it was impossible for me to have written or sent out any such directions; the officers, I don't doubt, will do me the same justice. And when my solicitor was admitted, finding that Mr. Gordon's affidavit might be of use, if allowed as evidence, a person was immediately dispatched, and who brought it in a different form from those which have been printed. And my solicitor can testify, that no draughts were sent by him; which, with the gross management of the persons concerned in this affair, is, I hope, sufficient to give your lordships the clearest conviction of my innocence in it. And I do solemnly affirm, that I never knew any thing of them; never heard of the name of Aikenhead before; nor can I find out any person (besides the master of that vessel) that ever did.

"The other crime is set forth in one Levett's deposition, in the Report made to this most honourable House: wherein (among a great many other most notorious falsehoods) she swears that one Mrs. Barnes told her, that I was instrumental in, or privy to, the shutting up of a person in a dungeon, for fear of his turning informer; and not only of him, but of 200 more upon the same account: which, I believe, is the most surprizing crime that ever yet was alleged against any Christian. Mrs. Barnes denies every syllable of this conversation; and if the person that swears this against her had been produced, she would be proved to your lordships to have been a vile infamous creature all her life. And if she is to be believed, or that your lordships can think it possible there can be the least truth in her deposition, it will be a sin to let me live, and impossible to find out a punishment too cruel for me.

"These, my lords, are the chief crimes which I am charged with; and very great ones they are, had they been in any degree made out against me. I am a stranger to the methods of legal proof, but have been told by counsel, that the greater a person's crime is, the clearer the evidence ought to be against him; and how weak and insufficient the proofs produced for this purpose are, and how clear and convincing those which have been offered in my justification, has, I hope, evidently appeared to your lordships, and given you entire conviction of my innocence; and that all the crimes alleged against me, are without the least colour or foundation of truth. But how much I have suffered for these supposed crimes; and what extraordinary means have been made use of against me, are things much worthier of your lordships' judicial consideration. To be taken up, and held to exorbitant bail, without ever assigning any particular crime against me: to suffer a long and close confinement, where the expence bears no proportion to my circumstances: to have numbers of people, and some of them creatures of the meanest rank and condition, taken up, examined, and tampered with, upon my account; and Newgate sent to for witnesses: to have a servant (who was turned off for his ill behaviour) brought as an evidence, and my most intimate friends imprisoned for not swearing against me; are hardships and proceedings, I believe hitherto unheard of in England; and such as I hope your lordships will, in your great wisdom and justice, think fit to redress. All which is of a piece with an infamous offer made to myself by one of the under-secretaries of state, who the morning after I was first examined, came to me with a message (as he said) from one of his superiors, to let me know, 'That I had now a very good 'opportunity of serving myself; and that he 'was sent to offer me my own conditions.' And when I declared myself an entire stranger to the conspiracy, and was sorry to find that noble lord have so base an opinion of me, he seemed to wonder that I would neglect so good an occasion of serving myself, 'especially when 'I might have any thing I pleased to ask for.' What authority that person had for his message, or the rest of his after-proceedings, I will not pretend to say: but as I have been ruined and utterly undone by them, I hope your lordships will take my sufferings, as well as circumstances, into your consideration; and instead of inflicting any farther pains and penalties, look upon me (as I really am) a person highly injured, and not a criminal concerned in any transactions against the government.

"As for my circumstances, they are but too well known in the world.

"And here I cannot omit my gratitude to the late and present constables of the Tower: for the late constable (though I never had the honour to see his lordship) was, upon a representation of my circumstances, so very good, as to procure me the promise of an allowance from the government: and his lordship, the present, has been so kind as to get it paid. But the officers of the place can testify, that this allowance has not been converted to any private use of mine, but constantly given to the persons appointed to attend me. And I must take leave to assure your lordships, that it has cost me more since I was sent there, than the government has now left me really worth in the world; and I must suddenly become a sacrifice to my necessities, if not set at liberty by your lordships' great clemency and compassion.

"If I have dropped any expression which may not be so agreeable to some particular persons in power, I could wish that my defence had not laid me under that necessity: and I do solemnly protest, that they have not proceeded from any resentment for my sufferings; but from a sincere endeavour to give your lordships the clearest conviction of my innocence. And since I could not merit their favour, I shall always endeavour to preserve their good opinion.

"As to the legality of these proceedings, and the danger of making precedents of this kind, those are things which have been already fully set forth by my counsel, and must be submitted to the great wisdom and jurisdiction of this most illustrious assembly: an assembly! which is not only the highest and most honourable, but the uprightest and most impartial I believe upon earth; and whose justice has ever appeared as extensive as their power. The great, and the only argument which I have heard offered for the passing of this Bill, is, that the occasion is extraordinary; that your lordships are in your legislative capacity; and though the proofs may not be so legal, however, 'in terrorem,' it is necessary to pass it. But I humbly beseech your lordships to consider where the extraordinariness of this occasion lies:—Has there been the least commotion in any part of the three kingdoms? Or any person injured in his liberty or fortune, besides those who have been so unhappy as to fall under this suspicion? Or is this occasion more extraordinary than when there was a public insurrection in the kingdom? And when the persons concerned in it, were tried by the common and ordinary courts of justice? And because your lordships are vested with a supreme authority, and not tied up to the common forms of law, can that be a reason for your acting directly contrary to it? And to suppose your lordships capable of doing so, was not, I must say, so becoming an argument to have been offered upon this occasion. And to have a session, which opened with so mild, so gracious a speech from the throne, end in such an extraordinary manner, must surely be very contrary to the design and intention of the throne at that time; and is, I hope, so still; especially since no intervening accidents have happened to ruffle the quiet and tranquillity of the kingdom.

"My lords; the first extraordinary bill that I believe ever passed in England, was that of the earl of Strafford,* and how much personal prejudice was in his prosecution, and how fatal that Bill proved in its consequences, I need not mention, since the Royal Martyr himself has, in his dying words, called it an unjust sentence, and imputed all his misfortunes to it. And pray, my lords, why was that sentence unjust, but because it was not supported by law?—And, to the eternal honour of this House be it said, that when the proofs upon his trial were not found legal, they refused to find him guilty. But when this extraordinary method was taken, and the torrent of the times bore down their usual justice, then the flood-gates of all those miseries were opened, which overwhelmed and sunk the constitution: and of which some of your noble predecessors had so strong and lively a sense, as to declare in this very House, that they would be sooner torn in pieces, than come into such illegal proceedings; and so fell a sacrifice to the love and laws of their country.

"To which I shall only beg leave to add one observation, that I am sure, is but too well known to that right reverend bench:—That of all the prelates who advised his majesty to the passing of that fatal Bill, not one of them escaped the violence of those very persons whom they endeavoured to oblige by that advice. These, my lords, were the unhappy effects and fatal consequences of one extraordinary Bill: and what those of another may prove, the great Director of all things only can foresee!

"Many are the arguments which might be brought to shew the great injustice, as well as inconveniencies, of these laws in particular: but as my liberty can be of no great moment to the world, I shall only beseech your lordships, not through me to give a wound to the constitution, which, perhaps, may not so easily be cured. The great characteristic which distinguishes England from the rest of the neighbouring nations, is, the excellency of our laws, of which your lordships are the great guardians: and if you suffer those laws to be broke in upon, and render life or liberty so precarious, as to be affected or taken away by every idle hearsay, that excellency must soon disappear, and the best form of government now upon earth, consequently sink into anarchy and confusion.

"My lords; the words of my Bill are very severe, and do not bear the least proportion to the proofs which have been produced against me: and I humbly hope, that my past sufferings will be looked upon as a sufficient punishment; especially since it is not pretended, that I have transgressed any law yet in being. I propose no great happiness in this life, and would willingly avoid as much misery as I could: and must therefore humbly beseech your lordships, to look upon me as a stranger in your kingdom, and a person (as I really am) inconsiderable in myself; and, consequently, incapable of doing the least prejudice to any government. For my behaviour, I am willing to give the best sureties that I am able: but if that be not approved of, I hope your lordships will give me leave to retire to some other part of the world, where I may enjoy my poverty with freedom. But, let my fate be what it will, I shall ever pray for your lordships' particular welfare, as well as the general prosperity of the kingdom.

"And so resign myself with the utmost humility, to your lordships' great clemency, justice, and compassion."

* See his Case, vol. 3, p. 1382.

Proceedings as to Atterbury.

In the House of Lords, on April 5, 1723, a Petition of Francis bishop of Rochester, prisoner in the Tower, was presented to the House, and read; setting forth, "That on Thursday the 4th inst. about three o'clock in the afternoon, colonel Williamson, deputy lieutenant of the Tower, attended by Mr. Serjeant, the gentleman porter, and by two warders, came up to

the petitioner's room, while he was at dinner; and, having put his two servants under the custody of warders below, told the petitioner, He must search him. The petitioner asked him for his warrant. He answered, He had authority from the ministry; affirming it upon his salvation; but the petitioner refused to be searched till he shewed it. He then said, He had a verbal order; but refused to say from whom. The petitioner told him, If it were verbal only, it did not appear to him, and he would not be searched. He endeavoured nevertheless to search the petitioner's pockets himself by force; but the petitioner wrapped his morning gown about him, and would not suffer him till he shewed his warrant; which the petitioner demanded five or six times to no purpose. He then ordered the two warders attending to come to the petitioner, and do their duty; and one of them laid hands upon him, and began to use violence; and though the petitioner knocked and called often for his servants, colonel Williamson said, They should not, nor were they permitted to come near him. Upon this, the petitioner submitted; and they took every thing out of his pockets, and searched his bureau and desk, and carried away with them two seals. They seized also a paper in the petitioner's pocket; but that being a letter to his solicitor, about the managing of his cause, which the petitioner thought they could have no pretence to seize, while he was under the protection of parliament; he took it again from them, and tore it; but they carried a part of it along with them. They searched also his two servants below, and took away a seal from one of them; and those servants likewise demanded their warrant, but they had none to produce. The petitioner therefore, as a lord of parliament, though under confinement, humbly prays, that their lordships would be pleased to take these matters into serious consideration, and grant him such relief and protection as their lordships shall judge proper, against such unprecedented, illegal, and insolent usage."

And thereupon a motion was made, and the question was put, "That colonel Williamson, the deputy lieutenant of the Tower of London, Mr. Serjeant, the gentleman porter there, the two warders who attended colonel Williamson yesterday in the apartment of the bishop of Rochester, prisoner in the Tower of London, and the two servants of the said bishop attending his lordship, do attend at the bar of this House immediately, to give an account of the matters mentioned in the said Petition."—It was resolved in the negative.

"Dissentient,

"1st, Because the petitioner, as a lord of parliament and member of this House, though no peer of the realm, hath an unquestionable right, under all circumstances, to the justice and protection of this House, against any persons whatsoever, who, during the sitting of parliament, commit any act of violence to his person or property, which this House may adjudge to be a breach of his privilege; and therefore, as we conceive, the facts alleged in the Petition, if the same are true, and no account given of them by the persons concerned to the satisfaction of this House, are an unwarrantable attempt upon a member of this House. We think that, in justice to the petitioner, and to the honour and privileges of this House, there ought to have been an immediate and impartial examination by this House, of the persons concerned; we finding no instance on the Journals of this House, where any member of the House has complained, by petition or otherwise, of the least violence or injury to his person, during the time of privilege, whereon the House hath not ordered an examination of the facts so complained of.

"2dly, Because it appears to us, that, the petitioner being under imprisonment, and a Bill depending against him in the House of Commons; that House, having allowed him the benefit of counsel and solicitors for making his defence, were proceeding against the petitioner on that Bill, in all probability, at the very time the matters complained of were transacted; and as that Bill may soon come under the consideration and judgment of this House, the seizing the petitioner's letter to his solicitor, or any thing which may concern his defence, we are of opinion, ought to have been examined into; it being, as we conceive, against the rules of natural justice, the laws of all nations, and the fundamental and known laws of this realm, that any papers, or other things, in the lawful possession of the person so accused, and which may relate to his defence, should be forcibly wrested from him; or that any person, and more especially a lord of parliament, being under imprisonment, and accusation for high-treason, should, by terror or other violence, be, without just cause, in any degree, disturbed in, or disabled from, making his defence.

"3rdly, Because the refusing to enter into the examination of the matters complained of by the Petition may, in our opinions, be construed to be a justification of the proceedings therein alleged, even though there was not a reasonable occasion for the same; and it being suggested in the Petition, 'That the deputy lieutenant of the Tower did affirm to the petitioner, upon his salvation, that he had a verbal order from the ministry, though he refused to say from whom, and not pretending that what he did was by his own authority;' we are of opinion, that it was of the greatest consequence to the honour of his majesty's government, that this House should have examined into this proceeding; and the rather, because we conceive it to be of the highest importance to the free and impartial administration of justice, that this House should, on all occasions, discountenance all appearances of force, especially on a lord of parliament, imprisoned and accused of high-treason.

"4thly, Because we think that, if an unjustifiable violence be offered to the person or privilege of any member of this House, and not

examined into, it may prove an encouragement to commit the like, if not further abuses, on any other member of this House, in future times.—Strafford, Scarsdale, Litchfield, Cowper, Poulett, Bingley, Bathurst, Foley, Bruce, Hay, Ashburnham, Guilford, Weston, Montjoy, Lechmere."

On April 9th, the Bill to inflict pains and penalties on Francis lord bishop of Rochester was brought up from the Commons to the Lords, and was read a first time. On the next day, on the bishop's Petition, counsel and solicitors were assigned to him, with freedom of access to advise him in private. And then a Petition of the said Francis lord bishop of Rochester; setting forth, "That there are divers papers laid before their lordships, by the House of Commons, to support the charge against the petitioner, in the Bill to inflict pains and penalties upon him; and several of those papers are said to be in cypher, which may require a deliberate inspection;" and praying, "That he may have some convenient time before the second reading of the said Bill, allowed, to inspect the said papers, by his counsel or solicitors, in the presence of proper officers," was presented to the House, and read.—And ordered to be rejected.

And Mr. Reeves and Mr. Wearg having opened the nature of the Bill, and the evidence to prove the allegations in the preamble thereof, proceeded to produce such evidence, among which, they offered an extract of a letter from sir Luke Schaub to lord Carteret, dated "Paris, 30th April, 1722, N. S." and a translation of a paper enclosed in sir Luke Schaub's letter to lord Carteret, to prove the conspiracy in general, alledged in the first part of the preamble of the Bill.

And the bishop of Rochester and his counsel objecting to the reading the said extract, or any extracts of letters whatsoever.

A motion was made, "That the Bishop be asked, whether he did insist that the extract of the letter from sir Luke Schaub, and the enclosed advice, should not be read? and if so, that he would state his objection or objections thereunto."

And the lord chancellor acquainted him therewith; and "that he and his counsel were at liberty to argue any objection he should state to the said extract."

And the Bishop and his counsel were heard thereupon.

The Resolution of this House, of the 26th of April last, in the case of John Plunkett, relating to the reading of extracts of letters to prove the conspiracy in general, was read.

A motion was made, and the question was put, "That the extract offered, by the counsel for the Bill, of the letter from sir Luke Schaub to the lord Carteret, be read in evidence?"—It was resolved in the affirmative.

Then a motion was made, and the question was put, "Whether the advice enclosed in the said letter from sir Luke Schaub be read, though this House be not acquainted with the name of the person who gave that advice?"—It was resolved in the affirmative.

"Dissentient.—Strafford, Craven, Salisbury, Osborne, Northampton, Scarsdale, Aylesford, Gower, Poulett, Fran. Cestriens', Masham, Anglesey, Cowper, Brooke, Litchfield, Bruce, Denbigh, Guilford, Dartmouth, Trevor, Foley, Exeter, Montjoy, Willoughby de Broke, Weston, Cardigan, Compton, Bingley, Ashburnham, Berkeley of Stratton."

The counsel for the Bill offered in evidence the copy of a letter, directed "To Mr. Dunsville, an attorney," enclosed in a letter, directed "To Mr. Thomas Wilmore, at Mr. Stokoe's, a bookseller, at Charing-cross, April 27;" with the enclosed, being a copy of O——'s letter to L——, dated, April 27.

And the Bishop and his counsel objecting to the reading the said letters, part of them being written in cypher, and the decyphering interlined:

A motion was made, "That the letters written in cypher and sworn by two decypherers to be truly decyphered, may be read."

And a question being stated thereupon:

These words were proposed to be added; viz. "without giving the prisoner an opportunity to make proof, of his part, how they ought to be decyphered."

The question was put, "Whether those words shall be made part of the question,"—It was resolved in the negative.

Then the question was put, "Whether the letters written in cypher, and sworn by two decypherers to be truly decyphered, shall be now read,"—It was resolved in the affirmative.

Then Peter Thouvois was examined, upon oath, to prove the said letters to be true copies of the originals, which were stopped at the post office, and copied, and sent forward as directed.

And Edward Willes, clerk, was sworn, and examined, to prove the said letters truly decyphered.

And admitting upon his examination, "that he did use a key in decyphering the said letters;"

And the bishop of Rochester insisting, "that the said Mr. Willes should produce the same:"

And the said Mr. Willes submitting it to the House, whether he should be obliged so to do:

A motion was made, and the question was put, "That Edward Willes be obliged to produce his key of the cypher?"—It was resolved in the negative.

"Dissentient.—Northampton, Salisbury, Strafford, Scarsdale, Fran. Cestriens', Poulett, Cowper, Cardigan, Bruce, Wharton, Brooke, Aylesford, Trevor, Guilford, Gower, Oxford and Mortimer, Masham, Foley, Anglesey, Litchfield, Exeter, Dartmouth, Montjoy, Osborne, Berkeley of Stratton, Weston, Willoughby de Broke, Bingley, Compton, Denbigh, Ashburnham, Craven."

On May 6, the day appointed for hearing counsel and witnesses upon the Bill, and for reading the same a second time, the Bishop was brought to the bar.

The counsel for the Bill offered in evidence the examination of Philip Neynoe, since deceased, before some of the lords of the council.

And an objection being made to the reading thereof, and some proofs being heard concerning the same:

The Bishop asked, "Whether enquiry was made of Neynoe, or if he gave any satisfaction to the lords of the council, touching the fact alleged in the said examination, that Mr. Henry Watson, who he, Neynoe, supposes to have been the earl Mareschal, was in England all the spring before; and that he lay with him several nights."

And insisting, "That he should have liberty to ask the said question, before the reading the said examination:"

And the Bishop's counsel being heard thereto:

They were ordered to withdraw, and the Bishop to be taken from the bar.

And being withdrawn:

After debate;

The question was put, "Whether the bishop of Rochester be at liberty to ask the said question, before the reading the examination of Philip Neynoe,"—It was resolved in the negative.

Then the counsel were called in again.

And the Bishop was brought to the bar, and acquainted with the said Resolution.

And the counsel for the Bill desiring "That the examination of Philip Neynoe might be read:"

And the same being opposed by the bishop and his counsel:

The question was put, "Whether the examination of Philip Neynoe, since deceased, shall be read,"—It was resolved in the affirmative.

And the same was read accordingly.

Peter Thouvois was examined, touching the copies of three letters stopped at the post-office; the first directed to Chivers, dated April 20, 1722, subscribed "T. Jones;" the second to Musgrave, dated April 20, 1722, under cover, "To Mr. Gordon the son, banker at Boulogne," subscribed "T. Illington;" the third to Mr. Jackson, under the cover of "Mr. Gordon le fils, banquier à Boulogne sur Mer," dated April 20, 1722, and subscribed "R;" which were copied, and sent forward as directed: and attested the same were true copies, except such words as were wrote over the figures.

And being asked, "If he had an order to stop and open those particular letters, or a general order to open all letters in such a hand?"

And the clauses concerning opening of letters, in the Act 9 Annæ Reginæ, entitled, "An Act for establishing a general post-office for all her majesty's dominions," being read:

The Bishop asked the said Mr. Thouvois, "If he had any express warrant, under the hand of one of the principal secretaries of state, for opening the said letters?"—After debate;

This question was stated, "That it is the opinion of this House, that it is inconsistent with the public safety, as well as unnecessary for the prisoner's defence, to suffer any further enquiry to be made, upon this occasion, into the warrants which have been granted by the secretaries of state, for the stopping and opening letters which should come or go by the post, or into the methods that have been taken by the proper officers at the post-office in obedience to such warrants."

And it being moved, "To leave out these words, 'as well as unnecessary for the prisoner's defence:'"

After debate;

The question was put, "Whether those words shall stand part of the question?"—It was resolved in the affirmative.

Then the question was put, "That it is the opinion of this House, that it is inconsistent with the public safety, as well as unnecessary for the prisoner's defence, to suffer any further enquiry to be made, upon this occasion, into the warrants which have been granted by the secretaries of state, for the stopping and opening of letters which should come or go by the post, or into the methods that have been taken by the proper officers at the post-office in obedience to such warrants,"—It was resolved in the affirmative.

"Dissentient.

"1st, We humbly apprehend that in all criminal prosecutions, the cross examining of witnesses is necessary for the defence of the prisoner, and for the satisfaction of those who are to judge of the facts alleged against him, in order to the discovering of truth, and detecting any fraudulent evidence which should be offered; and the Resolution above recited does, in our opinions, debar the bishop of Rochester, and every other person concerned, from asking any questions of the clerks of the post-office, who are brought as witnesses to the bar, relating to the stopping and opening of post letters, though letters pretended to be stopped and opened at the post-office are read as evidence against the prisoner; and we conceive that the preventing any further enquiry on these heads must lay this House under great difficulties, when they come to form a judgment on those letters, the validity of which will in a great measure depend on the proof given of their having been truly stopped and opened, as asserted.

"2ndly, We apprehend it to be impossible for this House to determine that the enquiry which is desired is unnecessary to the defence of the prisoner, till he shall come to make the application; and we conceive he should have the liberty of asking what questions he or his counsel think proper, of the clerks of the post-office, relating to the stopping and opening of letters, without acquainting the House what use he intends to make of their answers; and this

appears to us to be highly reasonable, essential to justice, and warranted by the methods which this House has hitherto allowed the counsel for the support of the Bill to proceed in, who have, during the whole course of this examination, reserved the application of the evidence they have offered, till they should judge convenient to make it.—Scarsdale, Northampton, Poulett, Anglesey, Foley, Craven, Bathurst, Ashburnham, Masham, Litchfield, Bruce, Uxbridge, Exeter, Compton, Gower, Brooke, Bingley, Hay, Montjoy, Aylesford, Cardigan, Osborne, Fran. Cestriens', Pomfret, Trevor, Weston, Strafford, Wharton, Willoughby de Broke, Denbigh."

Edward Willes, clerk, was examined upon oath, to prove the true decyphering of three letters, dated April 20, 1722, subscribed "T. Jones," "T. Illington," and "R——."

And being asked by the Bishop, "Whether it is possible to declare certainly, that any number stands for a name beginning with any particular letter, unless the immediate preceding and immediate subsequent number appears to denote a name, or words, beginning with the same letter:"

And expressing an unwillingness to answer thereunto; declaring, "That it would tend to the discovery of his art, and to instruct ill-designing men to contrive more difficult cyphers:"

The question was put, "Whether the said question asked of Mr. Willes by the Bishop should be again put to him,"—It was resolved in the negative.

The counsel were called in again; and the Bishop was brought to the bar, and acquainted with the said Resolution.

And the Bishop persisting to put several questions to Mr. Willes, relating to the method and manner of decyphering:

It was proposed, "That the House should come to this Resolution, That it is the opinion of this House, that it is not consistent with the public safety, to ask the decypherers any questions, which may tend to discover the art or mystery of decyphering."

And a question being thereupon put; it was resolved in the affirmative.

The counsel for the Bill offering the said letters to be read:

And the counsel against the Bill objecting thereto, unless it were fully proved that the Bishop was privy or consenting to, or directed the writing of them by George Kelly:

And the counsel for the Bill alleging, "That they now offered them to prove the conspiracy in general, and would afterwards apply them to the Bishop by other evidence:"

After debate;

It was resolved upon the question, That the said letters be now read.

On this day the counsel for the Bill declaring that they had gone through their evidence, and the Bishop, to whose election it was left, choosing not to begin his defence at this time, farther proceedings were deferred till the morrow.

On May 9th, his lordship's counsel being acquainted that they should now proceed in his defence, they desired, "That the counsel for the Bill might first apply the evidence they had produced in a particular manner; or at least, if that should not be thought proper, that then the House would declare, in case the counsel for the Bill should in their reply make any particular application of their evidence, to enforce it further than they had yet done, that then they might be heard a second time, by way of rejoinder."

Which being objected to by the counsel for the Bill; they having in general opened the application of the evidence they had offered;

The Bishop requested, "That the sense of the House might be known, as to the desire above-mentioned."

And after debate in relation to his said request, it was agreed, to call in the counsel and the Bishop; and that his counsel should be directed now to proceed in making his defence.

And they being again called in:

Sir Constantine Phipps and Mr. Wynne were heard in behalf of the bishop of Rochester.

Sir *Constantine Phipps*. My lords; By the appointment of this honourable House I have the honour to attend your lordships, as counsel for the reverend prelate, the unfortunate prisoner at the bar: and persuade myself it will not be difficult to defend his lordship from the heavy pains and penalties of this Bill; since the counsel for it confess that it is supported only by circumstantial evidence.

Bills passing into laws for taking away men's liberties and estates by circumstances only, are new. Convictions by circumstances were never heard of in ages past; and I hope will never be known in this, or any which is to come: and though one of the gentlemen said, that circumstantial evidence is sufficient at this time of day, I hope, the law is the same at this time of day, as ever; and that the lives and fortunes of English subjects will be as well protected and defended by your lordships, as they were by your predecessors.

The securities which the laws have provided for our liberties and estates, and the happiness that we cannot be deprived of them but by full and legal proof, are advantages which were obtained at great expence of blood and treasure, by your lordships' noble ancestors: and we doubt not but you will transmit them to posterity, as entire as they have been continued down to your lordships.

The law is the rule of men's actions; and persons accused as criminals for facts committed by them, ought to be tried by the laws that were in force at the time of the facts committed, 'secundum allegata et probata.' But laws made 'ex post facto,' to punish men for facts which were not offences when they were

committed, render all things that are dear to Englishmen precarious; and for that reason have been as often condemned, as they have been made.

The charge against the Bishop and Mr. Kelly are so interwoven, that I beg you will excuse me, if in my vindication of him, I urge any thing, which I offered in behalf of Mr. Kelly, when I had the honour to attend your lordships as his counsel: but I shall take care to repeat no more than is necessary.

My lords; I am very far from denying, or contesting, the power of parliaments as to Bills of Attainder; but I hope I may have leave to observe, that such a power hath been very rarely exerted, unless upon extraordinary occasions, and in cases of necessity. I hope too I may be permitted to shew, that the case of my Lord Bishop is not within either of those reasons.

He never withdrew himself out of the kingdom; never fled from justice, but was always amenable and forth-coming, ready to be tried according to the usual and ordinary methods of justice. And the attainders of Mortimer, and the earl of Arundel, in Edward 3's time, of sir Thomas Haxey in Richard 2's time, and others afterwards, were reversed, because the persons accused were forth-coming, and might have been brought to a trial according to the usual course of justice. Wherefore I hope the same reasons which prevailed with those parliaments to reverse those attainders, will have weight enough with your lordships to prevent this Bill's passing into a law.

The parliament at the Restoration, did not think fit to interpose their legislative authority even in the case of the Regicides,* but left such of them as were alive, and forth-coming, to the ordinary methods of justice, and gave them a fair trial for their lives and estates. The only remarkable Bill of Attainder, which hath been in in some ages (except of such as were in actual rebellion, or fled from justice) was that of sir John Fenwick. I own I mentioned this case on behalf of Mr. Kelly; and it being a case so material for my Lord Bishop's defence, I cannot in justice to his lordship omit making some observations upon it: from which it will appear, that the reasons given for passing that Bill are the strongest arguments in the world against this.

The preamble of sir John Fenwick's† attainder shewed the necessity of it: for the preamble sets forth, That sir John Fenwick was, upon the oaths of George Porter, and Cardel Goodman, indicted of high treason: that he obtained his majesty's favour to have his trial delayed from time to time, upon his repeated promises of making an ingenuous and full confession: that several times were appointed for his trial; at one of which he had been actually tried, had it not been for the expectation of the discoveries so often promised: that since the times appointed for his trial, Cardel Goodman, one of the witnesses, was withdrawn, so that he could not be had to give evidence. And it appeared upon the trial, that Porter had been tampered with, and had 300*l.* paid him, and 200*l.* more promised him, to go beyond sea. This made the presumption very strong, that Goodman was sent away by some of sir John's friends. So that there was an indictment against him; two witnesses were sworn upon it, and proved the treason; and he promised from time to time to make discoveries.

Hath my Lord Bishop been indicted? Hath there been any oath made against him? Did he ever impose upon his majesty or the ministry, by promising to make any discovery? Hath he sent away any one that was witness against him? Since these circumstances were thought necessary by the parliament at that time to induce them to pass that act; and the present case is not attended with any one of these circumstances; this, we humbly conceive, is a reason why your lordships should not pass this Bill.

The greater the offence is of which any person is accused, the plainer and clearer the proof ought to be: and my lord Coke in his 4th Institute, page 37, (which I mentioned the other day), speaking of the attainder of Cromwell, earl of Essex, by parliament, says; "The more high and absolute the jurisdiction of the Court is, the more just and honourable it ought to be in its proceedings, to give example of justice to inferior courts."

The offence charged on my Lord Bishop is of the highest nature; and this jurisdiction the most high and absolute: therefore the proceedings, without doubt, ought to be the most just and honourable.

The punishment inflicted by this Bill is the greatest that can be, next to death itself: for what can be worse, than for a reverend prelate of such advanced years, and of so infirm a body, to be banished into another country, and be forced to seek his bread in desolate places?

The punishment is still much severer to his lordship, who hath saved nothing to support himself; for his eminent hospitality, and his extensive charity, though they have fitted and prepared him to live in another world, yet have disabled him from subsisting in another country; there he will himself want that charity, which he so liberally bestowed upon others, and must beg upon his crutches or starve.

As to the evidence offered against his lordship, I humbly apprehend the proof would not be sufficient at law to support an indictment for the lowest misdemeanor. And will your lordships, in your great wisdom and justice, convict a lord of parliament, a member of your own body, and subject him to such severe punishment, upon evidence that at law would not be sufficient to convict the meanest subject of the most minute trespass?

This, I humbly apprehend, will appear to be the case, when the charge against my Lord

* See their Case, vol. 5, p. 947.

† See his Case, vol. 13, p. 537.

Bishop, and the evidence to support it, have been considered.

The Bill recites, "That there was a detestable and horrid conspiracy for invading his majesty's kingdoms with foreign forces; for raising a rebellion; for seizing the Tower and city of London: and for laying violent hands upon his majesty's most sacred person, and upon his royal highness."

As to the seizing the Tower and the city, and laying violent hands on the king and prince; neither of these crimes is charged upon my Lord Bishop. But the charge against his lordship is, that "he hath been deeply concerned in forming, directing, and carrying on, the wicked and detestable conspiracy, by traitorously consulting and corresponding with divers persons to raise an insurrection within this realm, and to procure foreign forces to invade this kingdom; and intending to raise a rebellion, at the time of the elections; and when the king went to Hanover; and at the breaking up of the camp."

As to the first, viz. the sending for foreign forces; the Bishop is not charged with being privy to any one of the three memorials: for Neynoe says, he wrote them, and they were dictated to him by Kelly and Watson, whom he supposed to be the earl Marishal.

As to the charge of raising a rebellion at the time of the elections, it is founded on a letter, signed 1378, and directed to Mr. Jackson; which, the Report says, the committee have good reason to believe was from the bishop of Rochester to the Pretender.

The letter says, "Notwithstanding this opportunity is elapsed, I agree with you, another may offer before the end of the year." And the observation made upon it, is, that it was wrote the 20th of April, when most of the elections were over: So consequently the opportunity was elapsed.

The letter of the 20th of April is supposed to be wrote to the Pretender at Rome. It supposeth a letter to the Pretender had been wrote, taking notice that an opportunity was elapsed at the elections; and that an answer had been made to that letter by the Pretender, that another may offer before the end of the year; which must be at least two months before the date of the letter; and that was before the elections were begun.

As for raising a rebellion, when the king went to Hanover; it is inferred from dark passages in letters of the 20th of May, 1722, N. S. 9th of May, O. S. and 10th of May, O. S. which are said to have passed between Dillon, or his secretary, and Kelly. And by comparing those passages, you will observe what foundation there is for such a charge.

In the letter of the 9th of May, O. S. 20th N. S. Quitwell, supposed to be Dillon's secretary, writes to Baker, supposed to be Kelly, "That if this post hath not brought an addition of three to the six, formerly come from Repney, it is easy for Mrs. Jones to see, what is still wanting for the purchase she intends to make."

In the letter of the 10th of May, O. S. Hatfield, who is supposed to be Kelly, writes to Howell, who is supposed to be Dillon's secretary, "That the king intends to set out early next month; if they could then compass barrels enough; the sooner the wine comes, the better; Jones promises to be a good customer."

From hence, and from what Pancier said, Skeen told him, it was insinuated, that great foreign forces were to be brought in for the Pretender; that great sums of money were contributed for that purpose; and that those sums were under the management of the bishop of Rochester; and all this, because Quitwell tells Baker, if the last post did not bring an addition of three to six, Mrs. Jones may see what is still wanting for the purchase she intends to make.

Now suppose, by Quitwell and Howell are meant Dillon's secretary; and by Baker and Hatfield, Kelly is intended; and suppose, that by the addition of three to six is meant a remittance of money; by 'wine' are meant 'soldiers;' and by Mrs. Jones is meant my lord bishop of Rochester: Yet can what Dillon's secretary writes to Kelly, or what Kelly writes to Dillon's secretary, affect the bishop of Rochester? If it can, it is in the power of any two men, one residing here, and the other beyond sea, to take away the life of any man breathing. But suppose we can make it appear, as most certainly we shall, that by Mrs. Jones cannot be meant the Bishop; then what becomes of this part of the charge?

The next thing to support this charge is, a passage in an extract of a letter dated the first of May, written from Quitwell to James Baker; in which it is said, "that Mrs. Jones cannot take a better time to have himself fitted with an easy saddle," &c. If an extract of a letter can be of any weight, and the construction put upon it is to be allowed; then the Bishop is turned general, or at least a colonel. For by Neynoe's information and Plunkett's cypher, 'saddlers and saddles' are 'Irish soldiers and regiments:' So the Bishop is represented as undertaking to raise a regiment of Irish soldiers, and to mount on horseback himself to command them.

As to the third thing charged, which was to raise a rebellion at the breaking up of the camp; there is no pretence of evidence. So that, upon the whole, there does not appear to be any pretence for that part of the preamble to the Bill, which chargeth the Bishop with having been "deeply concerned in forming, directing, and carrying on the conspiracy."

The next thing charged against his lordship is, that he was "concerned in a correspondence abroad, and some transactions at home for bringing in the Pretender."

Now as to this, I would observe, that there is not one witness against his lordship of any criminal act; that though all his papers have been seized, yet there appears not any letter or paper, under his hand, of a criminal nature; nor any letter proved to be written or received

by him, which is criminal: neither is there any charge of any meeting or consultation with any persons for carrying on this conspiracy. Indeed he is mentioned as a member of a club, called the Burford-club, of which the earl of Orrery was said to be chairman; which club (as I apprehend) was never heard of till Layer's trial. This accusation I know to be false; and never met with any one that believed it: therefore shall not trouble your lordships with any farther observations upon it than, just to take notice, that though he who made the list hath joined me with persons of great quality and honour; yet I presume to say that my profession in the law, as well as my religion, has given me such a sense of my duty, that no persons whatsoever are great enough to draw me into a plot against his majesty and the government.

I beg leave to observe that this charge is founded partly upon the hearsay of Pancier and Neynoe, and partly upon the three letters dated the 20th of April, 1722.

As to the hearsay-evidence; Pancier deposeth, That Skeen told him, that the bishop of Rochester and lord North and Grey had the principal direction of the conspiracy; that 200,000*l.* had been raised by contribution, and was put into the management of the Bishop; and that it was called the military chest. Now can this be evidence in an indictment or action, for the most minute trespass, or in any case? can it be imagined, that so much money could be raised among the Jacobites? or that such a sum could be raised, and not one contributor discovered? can it be imagined that such a sum should be entrusted with one man? Or that my Lord Bishop would be that man, who would have the care and trouble, and run the hazard, of such a sum? To which it may be added, that Skeene, the only person living, who by any person living is said to have said this, is now in custody, ready to be examined upon oath, and denies every word of it.

As to Neynoe's examinations, he speaks only what Kelly told him; and can what Kelly told him affect the Bishop? Besides, none of his examinations are upon oath, or so much as signed by him; (whereas the examination of Goodman, that was given in evidence against sir John Fenwick, was upon oath:) all of them appear to be taken after he was in custody, under great apprehensions and terrors; nay, it appears that one of them was taken the day before he drowned himself: and moreover, that only one of them was read, which was extracted out of three examinations, marked A, B, C, and said to contain the substance. We desire all the three examinations may be produced and read; and then it will appear, whether that one contains the whole substance; or whether there be not some things very material omitted: and it will likewise appear, that there are such inconsistencies in them, as will take off their credit. For in one place he says, he saw Kelly make use of the cyphers; and that Kelly owned with great freedom they were for carrying on a correspondence with the Pretender and his agents: and yet in another place he says, That Kelly never opened himself as to the plot now on foot; that indeed he had seen several letters from Paris and other places, but they contained nothing material. So that it must be supposed, either that there was no treasonable correspondence carried on by Kelly; or that Neynoe was not so great a confidant of Kelly's as he pretended.

Neynoe says, He drew three memorials; and the last was in December 1721, to the regent for five thousand men; that all the memorials were drawn by the order of, and dictated by, one Henry Watson, whom he did not know, but took to be the late earl Marishal; that Henry Watson, whom he took to be earl Marishal, was in England all last spring, and that he lay with him several nights.

It is very extraordinary, that the earl Marishal should trust a mere stranger to draw three memorials, and one of them for five thousand men to invade the kingdom; and that afterwards he should lie with him several nights, and not know who he was.

In one of his examinations he says, the heads of the memorials were given him by Kelly and Watson; in another he says, they were all drawn by Watson: and it is observable, that the rough draught or a copy of any one of them, is not produced, which certainly, he that intended to turn evidence, and so soon after became an informer, would have done, if there had been any such.

The Committee are pleased in their Report, pag. 38, to take notice, that Neynoe said, Kelly told him, that a lord of the council gave the Bishop notice of his being to be taken up some days before it happened; and are pleased likewise to say, that he afterwards confessed, (as they were informed) that in that, and other his examinations, he endeavoured all he could to create diffidence and suspicions among his majesty's servants. And what credit can be given, after this, to one, who had so little regard to truth, as to say any thing, though never so false; to so wicked a purpose, as to create a misunderstanding among his majesty's servants? especially if one considers how probable it is, that the remorse he had upon his conscience, occasioned by the evidence he had given, and his dread of the shame of being forced, when he came upon his oath, to deny what he had said when he was not upon his oath, were the reasons of his making away with himself. And we shall call some witnesses, who will give a full account of him.

We shall call one, who but lately deposed before your lordships, that Neynoe told him, he had said several things to a great man, which he neither would nor could swear without being perjured.

I most humbly beg your lordships' pardon, for being so particular in a matter which I had so lately an occasion to mention: but this is the hinge upon which the weight of the whole charge against the Bishop turns, and there-

fore I doubt not but your lordships will excuse me.

The next charge against my Lord Bishop ariseth from three letters, dated the 20th of April, 1722. One signed J. Jones, innuendo the Bishop; to Chivers, innuendo Dillon: the second signed Illington, innuendo the bishop; to Musgrave, innuendo lord Marr: the third to Jackson, innuendo the Pretender; and signed 1378, innuendo the Bishop. These letters are said to be wrote by Kelly, and dictated by the Bishop.

Now as to these letters, I beg leave to observe there is nothing criminal appears to be in any one of them. But then it is objected, that two of the persons are attainted of treason, and are agents of the Pretender; and it is high-treason to write to them: and the third is the Pretender himself.

Supposing Chivers were Dillon, and Musgrave were Marr: yet writing to them in private matters, not criminal in themselves, nor relating to the Pretender, is not treason.

But how comes the lord Marr to be an agent for the Pretender? He quitted the Pretender's service many years before; and from the time of quitting his service, till after the date of those letters, had a pension from his present majesty. I believe the counsel for the Bill, and all mankind will be at a loss to tell by what law writing to one, who hath quitted the Pretender's service so many years, and who hath subsisted ever since by a pension from his majesty, can be an offence.

Indeed, if it be proved that Jackson is the Pretender, I admit writing to him is treason: But if it be proved (as it will beyond all dispute) that by Jackson neither is nor can be meant the Pretender; and that my Lord Bishop neither did nor could write or dictate any one of these letters; then the whole charge against my Lord Bishop, founded upon those letters, falls to the ground.

The next thing I would observe, as to those letters, is from the Report, page 42, where the committee are pleased to observe, that the letter to Chivers is, great part of it, out of cypher; which seems to allow that the other part was in cypher. Therefore it was very necessary, I think, to have printed the letters in the cyphers and characters, in which they were written; and also as they are decyphered: Then the persons accused would have had an opportunity of employing men skilled that way, to see if they were rightly decyphered. This was done in Colman's Case.

The French papers, in the Appendix, are printed first in that language, and then as they are translated; which was not so necessary as printing the letters in cypher in this case: Because almost every one understands French enough to tell, at first sight, whether a French letter be rightly translated; but it is impossible for a man of the greatest skill in the art of decyphering, to tell, upon a sudden at the bar, whether a letter be rightly decyphered: So that all a man hath in the world, is to depend upon the skill and integrity of the decypherers. Nor are they infallible; for the witnesses who decyphered the letters, admit, that there are some words in them which they could not decypher; and those words may give a turn to the whole sense of the letters. Nay, Mr. Willes said, that one of the numbers he could not decypher stood for two words: He was likewise pleased to say, it was impossible that the number he could not decypher could make an alteration in the sense; which is very extraordinary for a man to swear: But if one word could not make an alteration in the sense, surely two might.

The writing these letters is charged upon Kelly; which cannot affect my Lord Bishop, unless they were dictated by him, or written by his direction, or privity; of which there is no pretence of proof. And therefore I shall next offer to your lordships some observations upon the arguments and circumstances alledged to support this charge.

It is observed in the Report, that the person who wrote these letters speaks of himself as being in ill health, in great pain, under some sad and melancholy circumstances, which he expects will soon blow over; and from thence it is inferred it must be the Bishop, because his wife was then ill, and died in six days after; and that he himself was at that time afflicted with the gout. One of the gentlemen, who was counsel for the Bill, said, these were circumstances, that did not happen to any two men in the world at that time: And give me leave to instance one other circumstance, which, I believe, did not happen to any one man in the world; which is, writing a letter of politics, when his wife lay a-dying.

Why these circumstances must necessarily intend the Bishop, more than any other person that was sick, and under misfortunes, I cannot apprehend. That ill health must necessarily imply the gout; and that it must be intended, that no man had the gout the 20th of April, but the Bishop; that melancholy circumstances necessarily imply a man's wife being sick or dying; and that no man had a wife sick or dying, but the Bishop; is, in my humble apprehension, a new way of arguing.

Another way of proving these letters to be wrote by the Bishop, is by the names and figures subscribed. For one letter is subscribed, T. Jones, and another letter is subscribed, T. Illington: And the Report observes, that wherever Jones and Illington are named, the Bishop is to be understood. But why the Bishop is to be understood by those names, 'non constat:' nor is there any pretence of evidence. And if we shew (as we infallibly shall) that by those names the Bishop could not be meant, and that he could not write, or dictate those letters; then the inferences against the Bishop from these letters, and from the subsequent correspondence under those names, become of no force or weight.

A third letter is subscribed, 1378; which the decypherers say denotes a person whose

proper name begins with an R. And the Report is pleased to infer, that it must be the bishop of Rochester. Now why 1378 denotes a person whose name begins with an *R*, the decyphers only know: And we are as much at a loss to know, why by a name beginning with R, must be intended the bishop of Rochester. If that number appeared to denote a name beginning with R, and if no name began with that letter but the bishop of Rochester's: there would then, I confess, be some weight in the observation.

That Jones and Illington are not the same person, appears from the letter of the 10th of May, from Hatfield to Howell; where, within the compass of two lines, they are distinguished. For in one line he saith, Jones promiseth to be a good customer; and in the next line but one he saith, Illington is gone in the country: which plainly shews them to be distinct persons. Besides, in the papers mentioned concerning the duke of Norfolk, his grace is several times denoted by the name of Jones: In Layer's list, sir William Ellis is described by that name; and in Plunkett's list Jones stands for the Germans.

The evidence to prove Jones and Illington to denote the Bishop, and the intimacy between the Bishop and Kelly, is the present of a dog called Harlequin.

The evidence stands thus.—"Rep. 40, E. 35, Hatfield, who is supposed to be Kelly, in his letter of the 30th of April to Howel, who is supposed to be Dillon's secretary, writes thus. Mrs. Jones died last week; pray present my respects to Mr. Musgrave (meaning Marr) and let him know, I received the present sent by the young lady; that he had a leg broken in the journey: However, I will take all the care imaginable of him; and inform Mr. Jones of it, to whom I know any thing from that quarter will be very acceptable."

Hatfield, in his letter to Musgrave of the 7th of May, 1722, says; "Mrs. Illington is in great tribulation for poor Harlequin: however, his obligations to the lady are as great, as if he had come safe."

From these letters it is inferred, that by Jones and Illington the Bishop is meant; and that a young lady sent the dog to Kelly as a present for the Bishop: and it is urged, that Mrs. Barnes in her examination of the 23d of May, says, The dog was not designed for her, but for the bishop of Rochester: that Kelly told her, the dog was for the Bishop; and that Kelly promised to get the dog for her from the Bishop, in case it did not recover its lameness.

It is admitted, that Mr. Kelly brought such a dog from France; that Mrs. Barnes had it; and that its leg was broken: but that it was designed for the Bishop, or that the Bishop ever had, or saw it, there is no pretence of proof; and my Lord Bishop utterly denies it; and Mr. Kelly hath solemnly denied it to your lordships: and instead of its being a present from a young lady to the Bishop, Mr. Kelly says he bought it of a surgeon at Paris, to give it to Mrs. Barnes.

There is one expression in the letter of the 7th of May, which is remarkable; and, in my humble opinion, enervates and destroys the force of all those letters relating to the dog: for it was written four or five days after the Bishop's lady was buried; and it says, "Mrs. Illington is in great tribulation for poor Harlequin." Mr. Kelly was supposed to write that letter, and was supposed to be a friend of the Bishop's; and could a friend, could any man of common sense, be guilty of such a foolish and ridiculous expression? Could any man say of one of my Lord Bishop's character, who was in the utmost affliction for his lady, that he was in great tribulation for the breaking of a dog's leg? It is evident, he who wrote that letter, did not know the Bishop's melancholy circumstances: it is likewise well known, that the Bishop never loved a dog, nor ever had one.

The next method of proving letters upon the Bishop, is by similitude and comparison of hands: not by comparing any paper written by him with any other writing; but by producing a letter supposed to be written by Mr. Kelly in August, and by proving that the three letters written in April, were opened and copied, and sent forward; and that those letters were of the same hand with that produced.

It was to be hoped, that, since Mr. Sidney's case,* the evidence by similitude of hands in criminal prosecutions would never have been offered: he was convicted upon such evidence, and for that reason his attainder was reversed in parliament. And therefore I humbly hope your lordships will not in your legislative capacity admit that to be evidence in this case, which in the same capacity you were pleased to condemn in Mr. Sidney's.

In 1695, Crosby was indicted for writing treasonable letters; and the evidence was similitude of hands: which evidence was disallowed by the chief justice Holt, and Crosby was acquitted.†

In Francia's case,‡ my lord chief baron Bury declared similitude of hands to be no evidence: and if it was not admitted in those cases, where papers were produced, and proved to be of their own hand-writing, and the papers with which they were charged were produced, and compared with those other papers; we presume, your lordships will not allow it in this case, where it is carried farther than ever it was attempted before.

The proof, as to this point, stands thus.—Three clerks of the post-office swear, that the 20th of April, 1720, these three letters were opened; that they took copies of them, and sealed them up again, and sent them forward; that four months after, another letter came to

* See his Case, vol. 9, p. 817. See, too, vol. 12, p. 305.

† See two Reports of his Case in vol. 12, p. 1291.

‡ See it in vol. 15, p. 898.

the office, which was stopped: that is produced; and they all swear, they believe the three letters were the same hand-writing with the letter produced. Now that men, who never saw a hand but once, and through whose hands so many letters pass in a month, should be able to swear, that three letters, which were sent in April, 1720, were of the same hand-writing with a letter which was stopped four months after, is strange and incredible.

I beg leave farther to observe, that the clerks of the post-office own they did not compare the copies of the three letters with the originals. And was ever a copy allowed to be read unless the person who produced it swore that he compared it with the original, and that it was a true copy?

It is remarkable, that Clark, one of the post-office, said, It was impossible to write a hand that had any resemblance to those letters; but yet, he said, the figures bore a similitude to the hand-writing: so that one hand cannot be like another; but figures may be like a hand-writing.

It is also observable, that the letter produced is proved to be Kelly's hand-writing only by Hutchins the messenger; who says he had him in his custody a week, and saw him write several letters; and by Malone, who proves Mr. Kelly's hand by a superscription in French, nd yet owns he cannot read French: whereas, we shall prove by three positive witnesses, that this is not his hand. Besides, they might have produced the letter which he wrote to my lord Townshend, which is admitted to be his hand.

We shall likewise prove by several witnesses, that at the time when the three letters are said to be written, the Bishop was at Bromley, and so lame with the gout, that he could not stir hand or foot; that his lady was dying; that no person was admitted to him, but two or three servants; and that Mr. Kelly was not at Bromley at that time, nor for three or four months before, or after. And therefore it is impossible those letters should be written, or dictated, by the Bishop.

The evidence of Wood the coachman, confirms this. For he swore, that he never saw Mr. Kelly, till he was carried to see him in the Tower; and that Kelly was not at Bromley; that no stranger was at Bromley from the 12th of April till the 26th, when the Bishop's lady died; and that he must have known it if there had; that the Bishop never sent the coach for Kelly or any other person in Berry-street, or any place near Pall Mall. So that by this, the examinations of Elizabeth Levett and Neynoe are quite destroyed.

But it is objected, that a man might put his horse at an inn, and come to see the Bishop, and Wood not know it. Can it be imagined that Kelly, who is supposed to be so particular a friend of the Bishop's, would leave his horse at an inn? But we shall examine other witnesses to this.

It was objected, that on the 10th of June the bells rang, and the servants had roses. But it appears most of them were red roses: and if it should be criminal to ring the bells on the 10th of June, we shall shew that the Bishop knew nothing of the ringing of the bells, or of the roses.

In the Report, page 50, the committee of the Commons are pleased to take notice; "That on the 11th of June, Kelly sends his friends at Paris an account of his late misfortunes; and after complaining of the neglect in not bailing him out sooner, says, Your old friend Rig, indeed, offered all that could be expected from the poor man;" and infer, "That by Rig is meant the bishop of Rochester."

Can it be imagined, that Kelly would call the Bishop, Gerrard's old friend; who, it is not pretended, ever knew him or saw him? And if 'poor man' be taken by way of contempt; can it be imagined that Mr. Kelly, a gentleman of that good sense and breeding, would use such an expression of my Lord Bishop? If these words are taken in the literal sense, it is as improbable; for the Bishop was not taken for a poor man: besides, how could he who had 200,000*l.* contribution money, and had the command of the military chest, be said to be poor? And I dare say there is nobody but believes, that if my Lord Bishop would have intermeddled on Mr. Kelly's behalf, he had interest enough to procure whatever bail Kelly wanted: and therefore I apprehend, that Rig cannot be intended to be the Bishop.

Indeed, no credit can be given to cant names; for the same names are used for several persons: as Laws in Plunkett's cypher stands for Marr; and in the cypher found on Dennis Kelly, it signifies Mr. Cæsar. Hawksby in Plunkett's cypher, stands for king George: and in the Report 62, there are compliments from the Pretender and his spouse to Hawksby; which, I presume, they did not mean for his majesty. Jones is used many times for the duke of Norfolk; it is used for sir William Ellis; and it is also used for the Germans; as I before observed.

That Jackson cannot mean the Pretender, is plain. App. E. 30. A postcript in the letter from Quitwell to Vernon, says, "Mr. Chivers advises, that the money you mention in Clinton's hands, should be equally divided between Medley (meaning the late duke of Ormond,) and Jackson (meaning the Pretender)." Now would any one devoted to the Pretender's interest, put Ormond before the Pretender? Jackson is put for the Pretender only in Plunkett's list; and yet it is observable, that Plunkett in all his correspondence never calls him Jackson, but Joseph or Jephson: and in the voluminous correspondence charged on Kelly he is not once called Jackson; but the usual names are Jephson and Joseph.

As for the letter to Dubois, it seemed at first to be a letter written from France to the Bishop by the name of Dubois; and after a month's time they find it to be a letter written by the Bishop. If so; writing a letter, and not send-

ing, can be no offence. But how comes the Bishop to keep that letter sealed, which he had written seven months before? The writer of that letter owns, he had received one from Dubois two months before, by Mr. Johnson; which was the name Kelly went by: and it is very strange, that the Bishop should be so weak, as to mention the name of the very person, who, it is said, used to write his letters, and by whom he was supposed to carry on his correspondence. If it be presumed that he wrote this letter; it must also be presumed, he was out of his senses when he did it.

That letter was not signed, and was dated the 16th December, but no year; though they have put the year 1721 to it. For a month together they never thought the letter to Dubois to be the Bishop's hand; though they had several of his letters. As to the observation made by one of the gentlemen, that the letter to Dubois was sealed by a particular seal, and not the seal with which he sealed such letters, as he intended all the world should see; that gentleman would do well to let us know, what letters were written by the Bishop, which he intended all the world should see.

That so many letters were written before 1712, and so few since, was occasioned by his lordship's great correspondence about matters of learning at that time, and his being from that time often afflicted with the gout, so that he could not write many letters, and consequently received but few. Besides, he was made bishop in 1713, and dean of Westminster; so had not time to write much himself, but kept a secretary.

As the matters before mentioned to be charged against my Lord Bishop, arose from letters supposed to be written by him; I shall next consider the charge against him, which arises from letters supposed to be written to him.

There are two letters mentioned in the Report as written to him; one of the 11th by Motfield, interpreted to be lord Marr, wrote to Illington; the other of the 25th of July from Digby, interpreted Dillon, to Mrs. Weston.

Now I would observe, that it is not pretended, that either of those letters was ever received by the Bishop; so consequently must be intercepted: therefore it would have been proper to have produced the letters, and to have proved the hands.

As to the letter from Motfield, it is only a compliment of condolence: and it is inferred that it must be the Bishop, because his lady died a little before. The letter says, "We must submit with resignation to what the just and great God thinks fit to order; but you know such things so much better than I do, that I will not trouble you with saying any more upon it." From these last words it is inferred, that this letter was written to a clergyman, and consequently the Bishop.

What weight this way of reasoning will have with your lordships in criminal prosecutions, is humbly submitted: but it must be observed, that this letter is said to be an answer to the letter said to be written the 20th of April to Musgrave. And as we have shewed, that it was impossible the Bishop should write or dictate either of the letters of the 20th of April, the answer must fall with the letter. But from hence the observation is natural, and undeniably true; that if Jones, who wrote the letter to Musgrave of the 20th of April, could not be the Bishop; and Illington, to whom Motfield wrote, be the same as Jones; then neither Jones nor Illington can denote the Bishop.

As to the letter from Digby to Mrs. Weston, who is interpreted the Bishop; it was written the 25th of July, N. S. wherein Digby says, "I cannot on any reasonable grounds complain of your silence, because I am informed of the situation of your health, and the concern your family are in, by bankrupts and lawsuits."

It must be observed, that on the 7th of July, O. S. G. W. in his letter to Digby says, "I saw Mrs. Weston yesterday; she never was better in her life than now." It is strange, that Digby the week following should take notice of the ill situation of Mrs. Weston's health. It is plain both these letters can't be genuine, and therefore no credit can be given to such a correspondence.

One way of fixing the intercepted correspondence, and the cant names mentioned therein, upon the Bishop, is, by the coincidence of times, and other circumstances; as of his lordship being in town, and out of town: and there are several mistakes in them. For in Hatfield's letter to Musgrave of the 7th of May, he says, Mr. Jones is come to town only for a day: if that be to be understood of the Bishop, it is not true; for he came to town the 5th of May, and did not go out of town till the 10th.

In the letter from I. H. to Dixwell, of the 18th of June, it is said, "Mr. H. Rig and Rep. are I hear in the country." And it is said, by Rig is meant the Bishop: which cannot be, for the Bishop was then in town. So in a letter to Maisonneuve of the 19th of July, it is said, "Rig is in the country." Whereas the Bishop was then in town. This is the more observable; because the Report, taking notice of the Bishop's being ill of the gout, says, (page 41,) "This particularity, as also several others, which will be taken notice of as to the Bishop's being in town, or in the country, at the respective times mentioned in the intercepted letters, have been carefully enquired into." And in the next paragraph, the Report, taking notice of the letter to Musgrave of the 7th of May, which says Mrs. Jones is come to town, says, "This agrees with the enquiry." And yet it will plainly appear, that there are such mistakes, as to those times, as I have before mentioned.

I hope I may have leave to observe, that these mistakes escaped the observation of the honourable committee of the House of Commons; and that though the letter of the 7th of May, in the Appendix, says, "Mrs. Jones is come to town only for a day," yet in the

Report, the words "only for a day," are left out.

All the circumstances before mentioned are made use of to fix the names of Jones and Illington upon my Lord Bishop; and therefore the next paragraph but one in the Report is very observable; which is this:

"These several circumstances, joined to Neynoe's declaration, that Kelly had told him the Bishop went sometimes by the name of Jones, and that Carte had told him, the Bishop went by the name of Illington, shew, that wherever Jones and Illington are named in Kelly's correspondence, the bishop of Rochester is to be understood by those names."

So that the whole proof of the correspondence charged to be carried on by my Lord Bishop under the names of Jones and Illington, is resolved into this; that Neynoe declared that Kelly and Carte told him the Bishop went by those names.

I beseech your lordships, is this proof? Is this evidence sufficient to deprive a reverend prelate of all his ecclesiastical preferments? and to send him into perpetual banishment? Do the lives and liberties of Englishmen stand upon so weak a foundation? If they do, I presume to say they are very precarious, and the most innocent man alive cannot say he is safe.

I beg your lordships' indulgence to observe farther, that this heavy charge against my Lord Bishop is supported only by innuendos: and with what an eye innuendos have been always looked upon in criminal cases, many instances may be given.

I shall trouble your lordships but with one; which is full to this purpose, and of the greatest authority: I mean the resolution of your lordships in the case of sir Samuel Barnardiston in 1683. He was prosecuted for writing letters, alleged to be seditious, and highly reflecting on the government, and the public justice of the nation; and was found guilty, and fined 10,000*l*. He brought a Writ of Error in this most honourable House, and your lordships were pleased to reverse that judgment; for that the information being grounded on letters, which in themselves were not criminal, but made so by innuendos, your lordships were pleased to declare, that innuendos and forced constructions ought not to be allowed; for all accusations should be plain, and the crimes ascertained.

Now if it can be supposed, without any evidence, that my Lord Bishop wrote the letters charged to be written by him; even then this case is the same with sir Samuel Barnardiston's.* For the letters are not criminal in themselves; nor can be made so but by innuendos, and strained, forced constructions. Nay, I presume to say, there is not one part of the charge but subsists purely by innuendos, and strained constructions.

I will trouble your lordships with instancing only one letter; which is that of the 20th of April, written to Mr. Jackson, and subscribed 1378. With the innuendos it is thus. 1378, innuendo a person whose proper name begins with an R, innuendo the bishop of Rochester, did write to Mr. Jackson, innuendo the Pretender; that, notwithstanding this opportunity, innuendo an opportunity of raising a rebellion in England at the time of elections of members of parliament, had elapsed; I, innuendo the Bishop, agree with you, innuendo the Pretender, that another, innuendo another opportunity of raising a rebellion in England, may offer before the end of the year, innuendo at the breaking up of the camp. Your lordships will please to observe what a superfetation of innuendos (if I may so say) there must be to support this charge; and without innuendos no part of the charge against the Bishop can be maintained: and therefore I humbly hope that the same reasons which induced your lordships to reverse the judgment against sir Samuel Barnardiston, will prevail upon you to reject this Bill.

To what I have objected, I imagine it will be answered, that your lordships are now acting in your legislative capacity; and that in your legislative capacity you are not bound by the forms of law: but I humbly submit it, whether you will not think fit to proceed according to the rules of law, though not according to the forms of it.

Men's lives and properties are to be tried and determined 'secundum allegata et probata;' and the proof in such cases must be legal proof. And I apprehend with great deference, that when your lordships proceed in your legislative capacity in other instances, you proceed according to the rules of law: as in bills for enabling persons to sell, or settle estates; or for making rivers navigable. If the title or property of any person come in question, your lordships are pleased to hold the parties to strict, legal proof: and why not in bills of attainder? Are bills of attainder (whereby men's lives are forfeited, their estates confiscated, their blood corrupted, and their families undone) of less moment than bills to enable persons to settle their estates for the benefit of their families? I humbly apprehend that your legislative and judicial capacities are here so united, that they cannot be separated. For a bill of attainder is a condemnation by parliament; and your lordships always hear and judge whether a party be guilty, before you condemn him. Will you then be pleased to judge, and determine upon less proof in one case than in another? Can it be conceived that your lordships will not act by the same rule in both your capacities? or that you will not have an equal tenderness and regard for the lives, liberties, and estates of the subject in one capacity, as in the other?

When a man flies from justice, he gives judgment against himself; and when a person accused doth by corrupt or indirect means conceal or convey away the witnesses against him, then he is the cause, why strict and legal

* See this Case, vol. 9, p. 1333.

proof cannot be had: and that may be a reason why less proof should be admitted. But in cases not attended with either of these circumstances, to say that less than legal proof is sufficient for a bill of attainder, is to affirm that private opinion alone, without proof, is a sufficient foundation to pass a bill of attainder. And how harshly that would sound in the ears of Englishmen, is humbly submitted to your lordships.

My lords, by our law a judge cannot go according to his own private opinion; but must be governed by the evidence given before him in court. For the rule is, "Nil refert, quod notum sit judici; si non notum sit in forma judicii." And if men's rights and liberties were to be determined by private opinion; how precarious would the lives and estates of Englishmen be? The most innocent man could not be safe; the wisest man could not foresee, where it would end; and England must no longer boast of the excellency of her constitution.

It is a rule, both in law and reason, that "Nemo bis puniri debet pro eodem delicto;" and yet that may happen to be the Bishop's case. For the charge in the Bill is general; intending to raise a rebellion, and holding treasonable correspondence in order to bring in foreign forces: but there is no particular fact charged upon him. Now if he should be indicted for either of those species of treason; and particular overt-acts of such treason should be alleged, as buying arms, and listing men for the Pretender, and the overt-acts should be proved by two witnesses; he might be condemned and executed for it. For he could not plead this Bill in bar to such indictment; because the indictment would not be for the same facts, there being no particular ones charged in the Bill. And yet it may happen (as I said) that my Lord Bishop may be indicted and tried for the treason mentioned in this Bill: as in the case of Hampden* and Fitz-Harris,† which I lately mentioned. For Mr. Hampden was tried for meeting and consulting to raise a rebellion, was fined 40,000*l.* and was afterwards tried for high-treason for the same fact: and though he insisted on his having been tried for the same fact, and desired to plead it; yet the Court would not allow it. And in Fitz-Harris's case, he was indicted for high-treason, and pleaded an impeachment; and averred, it was for the same fact. But the plea was over-ruled: for there being no particular article, the averment could not be supported; because he could not aver any thing that was out of record.

I humbly hope your lordships will excuse me for taking up so much of your time. But the multifariousness of the matters of which the accusation consists, and the weight of the subject, drew me into it. I humbly thank your lordships for your great indulgence and patience in hearing me: and if, as a lawyer, through my zeal for my client's service; or, as an Englishman, asserting those laws which I apprehend are the security of British liberties, I have let drop any expression which may be thought improper, I most humbly beg your lordships' pardon. And if there be a difference between your legislative and judicial capacity; I submit it, whether your lordships will be pleased to give that judgment in your legislative capacity, which the counsel for the Bill do, in my apprehension, admit you could not give in your judicial. And therefore, I hope your lordships will be pleased to reject this Bill.

Mr. *Wynne* (his lordship's other counsel) spake next.* May it please your lordships; I

* See it, vol. 11, p. 479.

† See it, vol. 8, p. 223.

* Lord Orford, in a Note to the anecdote which he relates concerning the duke of Wharton's Speech, on the question for passing the Bill against Atterbury, (see it, *post*,), says, "Serjeant Wynne served the Bishop in much the same manner: being his counsel, he desired to see the Bishop's Speech; and then spoke the substance of it himself."—Some Observations on the Catalogue of Royal and Noble Authors, &c.

This charge gave rise to a Vindication of serjeant Wynne by his son; who permitted them (as he expresses himself) to be printed in a periodical examination of books and pamphlets (see Crit. Rev. vol. 7, p. 453), and afterwards inserted them in "A Miscellany containing several Law Tracts;" which, in 1765, he caused to be printed for private gratuitous circulation. Of this Vindication the phraseology is stiff, perplexed, and ungrammatical: the matter consists partly of arguments, obvious and for the most part weak, and partly of allegations. The following are the most weighty paragraphs of the performance:

"Since the sight of the book, I have heard Mr. Wynne often declare (and I dare say from his known probity and veracity he would make oath, if the occasion required it), that he never did see or desired to see his lordship's Speech; nor ever read one line of it himself, nor ever heard one line of it read by any other person before it was spoke in the House of Lords. Nor has he to this day ever seen or read one line of it, though there is reason to believe his lordship's Speech is still in being, with an introductory account of the true grounds and motives of his prosecution, and if they could be compared would be found as different as could be upon the same subject.

"As for his lordship's Speech so called, printed by A. Moore, at that time, it is a spurious incorrect composition, and does not contain above half in quantity, and besides many nonsensical and unintelligible paragraphs, has hardly one true and correct passage throughout. But if even that were to be compared, no other likeness would be found than what necessarily arises from a reference to the same

am of counsel for this reverend prelate: and however unnecessary I know apologies to be before your lordships, who are always ready to hear what the youngest and most unexperienced person has to offer; yet it becomes me to say something for my first appearance at your lordships' bar, in a matter of the last consequence; and it was the desire of this reverend prelate, rather to make his defence by such weak hands as mine, as if he was persuaded, that his cause needed not the assistance of art or experience, in order to move the passions, or to impose upon the reason of his hearers; which he knows to be but an impotent help to persuasion, in comparison of truth and innocency. He appears before those, who (he hopes) will regard plain facts and positive law; and truth, notwithstanding all the disadvantages of an unskilful pleader, will, he hopes, at last prevail.

For my own part, since your lordships have assigned me for his counsel, I shall be under no apprehensions of danger or displeasure in performing my duty to him, in humbly offering every thing I think necessary for his just defence; and I will not doubt, but I shall be fully and favourably heard. And though it is his lordship's misfortune to be already prejudged in another place, and to be condemned without doors, by some few vulgar, misled apprehensions; yet he hopes better things of you, my lords: he does not doubt, but that your lordships, who in matters of less importance proceed with calmness, justice and prudence, will be careful not to deviate from those measures in a matter which demands the greatest caution and deliberation: for it is the case, the reputation, the liberty, the fortune, and (I was going to say) the life of a most learned prelate; because some circumstances of this Bill are so cruel and extreme, that it is little better than if it had affected life itself.

Every one that is a friend to this Bill, must avow, that it is not to be offered without an evident and cogent necessity. But, I hope, my lords, though the grounds and suggestions of it were true, and duly proved; yet that there is no such necessity.

In order to discover whether there be any such necessity or not, I shall consider the end proposed by this Bill, and then weigh the means whereby it is hoped to attain that end; and whether this Bill be a means necessary or convenient to attain it.

The end, I hope, is the security of the government, and the execution of justice, and it ought to be pursued by all regular and lawful means; and therefore, before I speak particularly to the crimes supposed in this Bill, or the proofs which have been offered to make them out, I shall beg leave to say something as to the manner and method of this proceeding. Not that I shall presume to question your lordships' power in such cases: but, as on the one hand we must admit your lordships may, and have in some cases exerted your legislative capacity, in declaring that a crime which was not so before, or by inflicting particular or extraordinary punishment on common and ordinary crimes; yet, on the other hand, till that is done, I hope I am at liberty freely to represent the inconveniency, the injustice, and the imprudence of making such a declaration, or of passing such a law, in the case now before you. If it should become a law, his lordship must dispute it no longer, but submit to it as just, whatever hardships he may, in the retirement of his own heart, conceive introduced upon him by it. But thanks be to God, this is yet no law, and that I am at full liberty to represent the injustice and the unreasonableness of this Bill; and to say, this is not a proper occasion that needs or calls upon your lordships to exert your legislative power.

I might here enlarge upon the injustice of all laws made 'ex post facto,' and for one particular case or person, and no other; that they are against the common law, and the common right which every one is entitled to, in the place of community where he lives; because laws, in their nature, ought to be rules for the general order, and good of society; and natural justice would surely in all such cases stop the precipitancy of your lordships' resolution, by this question; against what law hath he transgressed? If he hath transgressed any public known law, he is undoubtedly subject to undergo the pains or penalties enacted by it, when the proof is duly and fully made which that law requires. But if there is no such law yet in being, or if there is no such proof as that law requires to suppose him guilty, will your lordships introduce a new law, or a new sort of proof to make him so? If these methods are to be taken, the most innocent man is not safe, and the wisest man cannot judge what is an offence, or in what degree; what proof is necessary for his defence, or how he is to be tried. And in vain does the legislature every session provide laws, if a particular law or a particular proof is still to be made for every particular purpose, not only contrary to the tenor of all the former, but such as is not to be

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facts, papers, and letters. And I am sure where it occasionally mentions his counsel, it is with all due regard, and not the least complaint of any unfair or unbecoming behaviour of them.

"And it is well known Mr. Wynne never was alone with the Bishop during his commitment, and when sent for was either in company with sir Constantine Phipps, his other counsel, and with one or both his solicitors, who were assigned to assist him in his defence, and one or more of his servants; and therefore some other person must have been privy to this fact if it were true; besides others who narrowly watched, and probably over-heard, most things that passed at those short interviews."

It is also mentioned that "Wynne was in a manner little known to or acquainted with his client, till just before he had the honour to be assigned one of his counsel."

a rule or law in any other future case whatsoever.

Thus much I am sure may be justly urged in any place of judicature in the world, against all such laws in general; but much more as we are Englishmen, as we have laws, which my lord Bacon calls wise and just, that give to God, that give to Cæsar, that give to the subject, that which belongeth to them. Not like those of other countries, imposed upon the subject at the will of the prince, before probation or trial, whether they are fit and convenient for the genius of the people; nor the production of one man, or of one parliament in any one age, but the wisdom and experience of many generations.

And I am sure one of the greatest excellencies of this law, beyond that of other nations, has been always esteemed the common and ordinary method of trial. It has been always accounted the birth-right of an English subject to be tried 'per pares,' according to the known course of the law.

And, therefore, the better to shew the difference, and to evince the hardship of this extraordinary proceeding, I shall a little consider the nature of the ordinary trial; and though I might do this in the language of Magna Charta, and of many eminent, ancient writers of the law, I rather chuse my lord chief justice Hales, that great and good man, whose happy moderation between the prerogatives of the crown, and the just liberties of the subject, can never be remembered by posterity without the deepest honour. He says,* it is the best trial in the world, and one of the first principles upon which our constitution is erected. Here a man has a legal exception to any one of his triers, if they have any dependance upon either of the parties, are prepossessed or prejudiced before they hear the evidence. All the evidence is given openly, in the presence of the judge, jury, counsel, and parties; not in private, before a commissioner or a clerk, (as in Chancery, or by the civil law) where oftentimes a witness delivers that, which he will be ashamed to testify 'ore tenus,' and wherein a crafty clerk will oftentimes make a witness speak what he really never meant, by dressing up his evidence in his own terms, phrases, and expressions. Or a man may depose in writing, what the fear of being falsified, or perhaps a better recollection would not let him adhere to in open court, where he has an opportunity to correct, amend, or explain his testimony.

Besides this, (says that learned judge) a jury must all agree in their verdict, and are not to be concluded by a majority; and, therefore, though in some cases, the law does not positively require two, nor one witness, 'viva voce;' yet the credit of a verdict is great, where twelve men on their oaths unanimously agree.

The counsel on the other side may be apt to reply upon me, with the frequent abuses and corruptions of juries. My lords, I do agree, that may happen to be the case; or it may happen that one more knowing or over-bearing man among them, may sometimes govern all the rest. But if the same may happen, and often does in every society or number of men, and the best regulated bodies in the world, surely that can never be a reason to deprive a man of his common right, and to lay aside a most valuable institution.

I am afraid, my lords, this little has been too much upon a point that so little needs it: but the love of one's country, and its ancient legal constitution, is an honest prejudice, which every one is apt to indulge; and the advantage of this privilege, every one that hears me, (I doubt not) is in the heart sufficiently convinced of, and would boldly insist on it as his birth-right in any case of his own, where his own property, his reputation, his life, or his own liberty was in the least concerned.

It is urged by the counsel for the Bill, and indeed by the Bill itself, that this is an extraordinary case, and requires an extraordinary remedy, where the offender has taken care, by subtle contrivances, to keep out of the verge of the law, and the reach of all ordinary proceedings. But if such a cruel, artificial suggestion be allowed to be a good reason to deprive a man of the benefit of the law, no man's life or liberty is safe. The same may be suggested of every offender, and in every offence: that a man endeavours to evade the punishment of the law. The same may be said with more justice of every one that pleads not guilty, and insists on his trial, that he endeavours to evade the law, because such an accusation or such an indictment is found against him. And yet the most rigid casuist never yet maintained, but that any man (though he knew himself to be a most guilty criminal) might plead not guilty and insist on his trial.

But if this cruel artifice is to prevail, and this should be a reason to exert such an extraordinary proceeding; woe be to all men of sense and ingenuity! Nay, my lords, if such a notion is to take place, the Bishop is in a much worse condition, than if Neynoe were alive, or any other witness would have deposed, 'viva voce' against him, all they would have had them. For even then, his accusation or indictment must have been found upon the oaths of twelve men at least, he would have had his legal trial, and his challenges. This I say upon a supposition that the gentlemen of the other side may not allow his lordship to be a peer of the realm; but if they do allow his right of peerage before your lordships' bar, and consequently that he is entitled to a trial by his peers, yet still he would have had his legal exceptions to the testimony of the witnesses; there must have been two positive witnesses to the same overt act; and his accusation must have been found by twelve men at least upon their oaths; and, after all, if his lordship should have been found guilty, he might move in arrest of judgment. All which benefits he

* Hist. of the Common Law, c. 12.

is now utterly deprived of, by this method of proceeding.

We shall be told (I doubt not) by the counsel for the Bill, that your lordships sit now in a judicial capacity; that you are judges of the fact as well as of the law. No man will doubt, but your lordships have a judicial capacity, and have at all times most worthily exercised it; but yet I must beg leave to doubt, whether your lordships are now properly acting in that capacity or not? You have a power it is true in this method of proceeding to condemn this reverend prelate, if guilty; but not to save and acquit, if you are ever so well satisfied of his innocency; and whether it be your lordships' pleasure to pass or reject this Bill, I desire to know of the learned counsel, whether it may be pleaded in bar of a prosecution in the courts below, that he was 'auterfoits acquit,' or 'auterfoits convict' before your lordships? or whether this proceeding by Bill might be pleaded in bar, even of an impeachment for the very same treasons? or whether your lordships' resolution on this Bill (whatever it be) would be any legal 'estopel' to any other Bill in a future session? No, my lords, I humbly apprehend, it would not be a good bar or a legal plea, either at common law, or according to any rule or usage of parliaments; and therefore we hope your lordships will not do that which after all cannot be a complete or a final judgment, and by that means draw this reverend prelate into the danger of a double trial; which, I am sure, is not only contrary to the rules of law, but also of natural justice. I have the more countenance in saying this, not only from Hampden's case, but from the known case of Fitz-Harris;* who pleaded this very matter to the jurisdiction of the Court of King's-bench, that he was impeached for the same crime by the Commons of England; but it was the opinion of that court, with the advice of all the judges, that he might, notwithstanding, be tried there; and, in fact, was tried and condemned by the Court of King's-bench, though the impeachment was still depending before your lordships' House.

But if your lordships are resolved to proceed in your legislative capacity, and my lord bishop must, after all, be in danger of the ordinary method of trial; yet suffer me to say what has been done, in former times, by former parliaments, on the like Bills; and how light soever other authorities may seem, we hope your lordships will have some regard to your own usage and resolutions.

There have been too many instances, I confess, my lords; but those, that can be in any degree justified, may be reduced to these few. They are such as passed against persons dead, or who fled from justice, and did not render themselves by the time appointed; or they have passed against such as were in actual rebellion, in direct opposition to all methods of trial, and in defiance to all courts of justice; or against such whose treasons were flagrant and undeniable, but their persons above the reach of inferior courts and commissions. Those few sacrifices to the heat and necessity of the times have been most of them reversed with infamy and detestation, when men were cool, and at liberty to hearken to the voice of law and reason, and began to consider they had only prepared shackles for themselves. Those few melancholy instances, procured without due trial by an excess of prerogative, of persons that have been forth-coming, principally because it was the will of a prince, are not to be mentioned without horror and detestation. Such as those, says my lord Coke, 'auferat 'oblivio si potest, si non, utcunque tegat silen-'tium.' Let such gross breaches and violations of the sacred and unalterable rules of justice be forgot, if it be possible; or at least draw a veil over them, and let them be buried in perpetual silence.

But in all sober, regular times, a free trial in the ordinary course of law has seldom been denied, even where the facts have been so notorious (as one would think) almost to need no trial, and so evident as to need no proof; as the regicides, except such as fled from justice, were admitted to trial, no less than twenty-nine before one commission of Oyer, and every one heard with patience in the ordinary course. Even Felton,* that stabbed a prime minister in the execution of a high commission, though he confessed the fact, both before the council and court of King's-bench, and justified it as a public service to the nation, in the most daring and impious manner, was brought to trial, without superseding any of the ordinary methods and circumstances of justice. Indeed, where some flagrant crimes have been legally proved and determined in the courts below, parliaments have sometimes thought fit to add to, or heighten the degrees of punishments. It was so resolved in the case of the Gunpowder-plotters 5th November, that they were at first to be tried at law, and then the parliament (if need be) to add a confirmation to it. Nay, that resolution went farther; it says, they were not competent judges of it, before it was found in the courts below.

I might mention the opinion of judge Dodderidge, the Mirror of Justice, lord chief baron Atkins, &c. who say the parliament is a supreme court of Oyer, and that the proper subject of their Oyer is such offences for which right cannot otherwise be had, and to deal with delinquents too high for the ordinary courts. And, as I am before your lordships' bar, I am very proper to mention the resolution of your lordships' predecessors, in the case of Fitzharris† who (as I before mentioned) was impeached by the Commons of high-treason; they refused to take him out of the hands of ordinary justice, and directed him to be pro-

* Vol. 8, p. 223, of this Collection.

* See his Case in this Collection, vol. 3, p. 367.

† See it vol. 8, p. 223, of this Collection.

ceeded against according to the course of the common law.

And what opinion subsequent parliaments have had of my lord Strafford's bill of attainder, best appears from the words of the act of reversal,* by ordering all the records and proceedings relating to it to be cancelled and destroyed, that no remains of so evil and unjust a precedent might be visible in after ages, or brought into example to any one's prejudice. But even in that detestable instance, such informations and evidence were not admitted, the witnesses were all examined, 'viva voce,' upon oath, and he was first adjudged guilty, by way of impeachment at the bar of the lords, before there was any order for a Bill. The very same method was observed in the cause of archbishop Laud,† and articles fully proved against him, as they thought. If it had not been so, even that House of Commons, as bad as they were, and as thirsty as they were after the blood of those noble persons, probably would not have ordered those bills. But yet this latter instance of archbishop Laud never had the royal assent: and it is well known in history, what desperate measures were made use of to induce the Lords to pass it; and at last I think there were but seven of your lordships' whole House that were present when it was passed. But if this Bill should pass, we must no longer blame and condemn those instances; for this will, in effect, re-enact them, and many others, which the wisdom of former parliaments have reversed with marks of infamy and detestation.

How much more is there to be said of sir John Fenwick's case?‡ He had been indicted upon the evidence of two positive witnesses: there had been several preceding trials at law, by which it manifestly appeared that he was equally concerned with those that were found guilty. Sir John Fenwick had likewise withdrawn himself from justice, and was retaken (a circumstance always urged as a strong presumption of guilt.) He had protracted his trial by offers of discovery, the reason of which afterwards appeared to be, that one of the king's witnesses might withdraw himself beyond sea; and although that witness was gone, yet his evidence not only remained in writing signed, and upon oath, but was attested and confirmed by some of the grand-jury themselves that found the Bill, and by others of the petty-jury, before whom that witness had given the very same evidence. There was a proof likewise that he had attempted to corrupt the remaining witness, as well as some of the jury. These were circumstances upon which that case was founded. No man can say, but there was a reasonable evidence, though not strictly legal; one full and positive witness, and many strong undeniable circumstances; and yet the opposition which that had in both Houses, was very great. Whether the reasons that prevailed for the passing of it were sufficient, becomes me not to enquire: since it is still a law, I must presume them just.

But is there any thing, my lords, like that, in the case now before your lordships? Has there been any attempt to withdraw from justice? and yet that honourable committee have been pleased to observe, his lordship had notice that he was to be apprehended some considerable time before. Has there been any preceding trial, in which my lord bishop's name was mentioned as an agent, much less (as this Bill suggests) a principal manager and director in the conspiracy? Or, in that one trial which hath been, has any thing appeared to derive the least suspicion of guilt upon him? Can any one say he has used any methods or artifices to avoid or protract his trial in the ordinary course of law? Has he not on the contrary, (and as one of the strongest proofs and convictions of innocency) sought and petitioned to be tried? Yes, my lords, he has applied in all courts, and in all places, in the most earnest and legal manner, to be brought to trial. Has this reverend prelate used any indirect measures to corrupt or withdraw a witness? And yet Mr. Kelly, (who is the only person supposed capable of testifying against him) it is well known, had his full liberty, even after his lordship's apprehension, but would not hazard his recognizance by one day's non-appearance. No, my lords, nothing of that kind has been attempted to be proved, nor so much as insinuated in this case; nor is there here before your lordships any one positive witness of any kind: nor is there the sanction of any one oath here, or any where else, in any one material point against his lordship. What need therefore, or what reason can there be for this Bill? Surely your lordships will never pronounce a judgment that shall affect any man's life, liberty, or fortune, without some oath, and on circumstances so widely different in every respect from those of sir John Fenwick.

And if this case bears no proportion nor similitude with that of sir John Fenwick; I am sure it has much less, or rather none at all, with any of those before-mentioned. For we hope, after so long and full a discovery of the conspiracy, and those many just methods of preparation against it, the danger cannot now be so great or cogent, as to require so precipitate a resolution. His person, your lordships see, is safe and forth-coming, and the courts of law in their usual and open course; and at this time filled with such learned and resolute judges and ministers of justice, that they are equal and able to deal with the most bold and daring offender.

There can be less reason therefore, none at all we hope, for your lordships at this time to exert such an extraordinary method of proceeding.

* See it in vol. 3, p. 1525, of this Collection. As to the provision in the Act of Attainder against Strafford, see serj. Maynard's account of it cited by Mr. Hatsell in his Parl. Prec.

† See it in this Collection, vol. 4, p. 315.

‡ See it vol. 13, p. 537.

But there is this further objection against proceding by Bill, that it makes not only your lordships pronounce judgment against one of your own members, and a very terrible one too; but it makes the king himself, without hearing one word of the defence, in person, pronounce a judgment upon his subject, which his own gracious temper must be averse to; which the common law therefore has wisely left to be pronounced by his justices, even in those courts where he is always supposed to be present. But in this instance, there is something which must be still more ungrateful to him; in that it is to exclude a branch of prerogative which his majesty most delights in, and it must be some surprize to every good subject to find his royal judgment so highly mistrusted.

There is another thing, which, I persuade myself, your lordships will fully consider; that if this method of proceeding by Bill be encouraged and grow familiar, it will put an end to one considerable branch of judicature, which your lordships were heretofore so justly jealous of, as not to admit at any time the least competition. The Lower House will hardly care to appear any more before your lordships as accusers or prosecutors, when they can so easily partake in your judicial capacity. And every such Bill (especially against a member of this House) is a direct infringement and diminution of that high and valuable privilege, and will open a door to some other mischiefs to the peerage, which I had much rather your lordships would suggest to yourselves, than I express. It has been always doubted without doors, whether your lordships could begin such a Bill against a commoner; but I think it may be more justly doubted, whether the Lower House can begin such a Bill against any one of your lordships: and if this Bill should have no other consequence, it will establish this so far, as to bear no question hereafter.

My lords, I need not say, how much more proper it would have been for the Lower House to have left this matter intire to your lordships; because it has been so often resolved by your lordships' predecessors, that the House of Commons have no power of judicature or coercion against any one, but in matters concerning that House. Whereas this is a case of peerage, the punishment, and the exclusion of a member of this House. There is an instance on your lordships' journals, where the lord Purbeck voluntarily surrendered his title and dignity of viscount to the king by fine, and yet your lordships unanimously reversed that judgment, and declared, that no place could judge of, or intermeddle with dignities or rights of peerage, but your lordships' own House.

And those, my lords of that reverend bench, will surely consider what a fatal blow this Bill will give to the discipline and polity of the Church of England. They have more than ordinary reason to be jealous of increasing such precedents, and of introducing methods of depriving bishops and deans, hardly known to former ages. The ancient canons have already prescribed methods of judging, censuring, and deposing bishops, and the cases when and where those methods are fit to be exercised. I don't say the parliament cannot do this, or any thing else which they think proper; but the metropolitan, their lordships know, is entrusted with this power over his suffragans, or a provincial synod. And it is plain, the law of England takes notice of no other power that can regularly deprive. For to mention but this instance, if an issue should be joined, whether a bishop be deprived or not; the Court where such issue should arise, could only write to the archbishop to certify. And to prove this assertion, I will not name bishop Stillingfleet, or any of those great ecclesiastical authorities, (since possibly they may be excepted against, as persons who have too much interest in the case to be impartial) but it is so laid down by my lord chief baron Atkins,* in his great argument of ecclesiastical commissions; and by my lord chief justice Holt, and the Court of King's-bench, in the case of Dr. Watson, bishop of St. David's.†

All precedents, my lords, will increase; and the scorn and contempt of libertines against your lordships' sacred order is too great, to drop or to forget a precedent so grateful and pleasing to them as this will be. Every one knows the destruction of the smaller religious houses, only made way for that of the greater. A time has been when their lordships' predecessors were all excluded and sequestered; and it has been attempted, even since the Restoration, to take away deans and chapters. I am far from apprehending any such thing at present, and I hope it will never enter into the heart of any man. But, my lords, I confess I thought as little at this time of such a Bill as is now before you, to deprive a bishop and dean at once, not only of all his dignities and benefices, but from the exercise of any part of his holy office and function: and I will say, that if this Bill should pass, and by any of their lordships' assent, such a design will be rendered more easy and familiar, and much more unpitied, by all mankind.

Give me leave, my lords, next to observe, with what caution and moderation other parliaments have proceeded, even in those cases where they have thought proper to exercise their legislative capacity. I pass over the statute 7 W. c. 19, for imprisonment of sir Thomas Coke, &c. and many other such cases, which were too great and intricate for the ordinary course of law, but yet too low and inconsiderable to enter into this comparison. But the statute 8 W. c. 5, may be named, I am sure, with that now before you, for the imprisonment of Counter, &c. concerned in the Assassination Plot; against all whom there was some positive evidence upon oath. Though the zeal of that parliament can never be ques-

* Salk. Rep. 135.

† See his Case before the archbishop, vol. 14, p. 447.

tioned from an act so full of gratitude, and in such strong terms and accents of loyalty to the king, yet they did not at once, and at one single stroke, cut them off from the land of the living, and utterly deprive them of all the necessaries of life. The first step that parliament took was to pass an act for the detainment of them for the space of one year only, not to the forfeiture and deprivation of all they were worth, or to the exclusion of his majesty's mercy, but even to leave a discretionary power of bailing within that time, to any six of the privy council, if they judged proper. Their further obstinacy and impenitency occasioning another act, 9 W. c. 4, to detain them a year longer, it was still under the same exception. At the end of that term another act was made, impowering the king to detain them during his pleasure, 10 W. c. 11. After these, two other acts passed, empowering the late queen and his present majesty to detain them. What the particular reason of these alterations were, I cannot take upon me to determine, because the acts themselves are wholly silent; but, my lords, such were the prudent and moderate steps taken by former parliaments, even in that bold and wicked conspiracy.

I may also justly take notice of the prudence and clemency of the last parliament, when there was so loud and so general a cry for justice, and when the necessity of the time seemed to require a more speedy and extraordinary degree of punishment than the common law was acquainted with: but with what difficulty, with what slow paces, and with how many tender circumstances did that Bill pass? Your lordships will easily imagine, that the persons I here speak of are the late directors of the South Sea company.

It would ill become me, my lords, if I had inclination, to insult the distresses, or to aggravate any of those gentlemen's misfortunes; but the service of the reverend prelate now under consideration, requires me just to mention what a state of confusion they had reduced the kingdom to. How many thousands have felt and still feel the pernicious effects of that scheme? Though their crimes had no particular appellation, or determinate punishment in our law, yet the civil, and the laws of other countries could have told us, that 'crimen peculatûs,' the robbery of the public money, was such an infamous transgression, that the punishment of it was death, both in the principal and accessaries. How different and how mild was the punishment inflicted by the late parliament, in comparison of that, I need not mention; and every one knows, how tenderly and sparingly that law has since been executed upon them, and how much they still enjoy of the spoils and plunders of the nation.

Let us not then follow every precedent that has been, but the just and prudent precedents of moderate times, and of good and peaceable reigns. Let us not be ambitious to surpass the proceedings of violent and arbitrary men, which we or our posterity may have cause to repent of hereafter; but let us imitate such only as are agreeable to the law and constitution, such as are grounded upon true reason, and the principles of exact justice.

Having thus spoken as to the method of these proceedings in general, and shewn (in some measure, I hope) that they are contrary to the public wisdom, contrary to the known rules of law, and the common right of the subject, I shall, with your lordships' favour, next examine the foundations and suggestions of this particular Bill. As for those general matters and allegations with which it is introduced, and upon which the counsel for the Bill have spent so much time, there is no necessity, as we conceive, to answer to. We are here before your lordships only as counsel for this reverend prelate, one single supposed conspirator; and it would ill become us in the least to controvert, that there has been a conspiracy formed and carried on by some persons abroad, and by others at home, after it has been so solemnly resolved by both Houses of Parliament. Nor can we deny, but that Mr. Layer has been tried, convicted, and attainted of it: but we are yet to seek how these things have any relation to the case now before your lordships; or how that unhappy gentleman's case comes to be connected and made part of my lord bishop's, as it is by this Bill. We may justly appeal to every one that heard or read that trial, whether this reverend prelate's name is so much as mentioned in any one line of it; whether there are any grounds to think, from any of that gentleman's papers or examinations, that his lordship was privy to, or in the least concerned or acquainted with his person or his intentions: and I dare say, his lordship is as much amazed at the rashness and folly of his schemes, as he detests the wickedness of them. Notwithstanding which, it is his misfortune to be charged in this Bill as a principal actor and director in the framing and carrying on of those very schemes and designs for which that gentleman has been convicted. And as to the cyphers and papers of Plunkett, I am as much at a loss to imagine, upon what grounds they should be given in evidence against the Bishop, since it is not so much as suggested in the Bill; nor is there any thing throughout the Report or Appendix, that in the least charges his lordship with any intercourse or correspondence with him.

It is strange, my lords, that persons' thoughts and intentions, so widely distant in all other respects, should yet center in such unnatural projects and wild undertakings, without some previous discourse, some consultations, or acquaintance one with the other; and yet as strange and unaccountable as it is, this reverend prelate is charged in the very same manner by this Bill, with consulting and endeavouring to raise an insurrection, to procure a foreign force to invade the kingdom, and corresponding with the Pretender, and persons employed by him, knowing them to be so employed. And if these facts, my lords, had been duly and

legally proved, I should have very little to say in his defence, but humbly entreat the mercy and compassion of this honourable House; for they are offences in themselves so great, that on the one hand they are not capable of aggravation, nor on the other of excuse or diminution, by any thing I can say. But if the facts have not been proved in the whole nor in part, the bare affirmation or allegation of them is only 'brutum fulmen,' and does his lordship no more harm than any other innocent man, whose misfortune it is to fall under an unjust accusation. Or if those circumstances which have been proved are not criminal in themselves, they shall not, we hope, by inferences and deductions, be heightened into crimes; and the number or complication of them shall never make them exceed their nature. And, my lords, we hope, that notwithstanding all that has been affirmed, alleged, or proved, this reverend prelate can still say, not only in the form of law, but boldly and with a safe conscience, and upon an impartial and serious recollection, that he is not guilty of any one of the charges contained in the Bill: that he is not conscious to himself of any one treasonable or irreverent expression, or of any one degree of offence committed by him, with respect to any of these charges. He can still say, that he has not acted in direct violation of his oaths and obligations, nor to the scandal of religion or his holy function. I am sure, my lords, I should not take upon me to say this for his lordship, or any man alive, unless I thought we had a full and positive answer to every thing that has been said; unless I was verily persuaded we had a sufficient and a legal proof to encounter all that has been offered on the other side; or unless my instructions told me, that many things in the course of their evidence are utterly false and groundless; false, I say, as we shall prove (if my instructions are true) by the fullest proof, and the most satisfactory evidence that is possible in the case; by such arguments and reasonings as we think are clear and undeniable; by some witnesses we never saw nor heard of before, consequently the more credible and impartial; by others, whom I am sure we had no opportunity to lead or instruct; and all (as I am informed) glad, that it is consistent with the rules of your lordships' House, to receive their testimony upon oath. In short, every circumstance, every part of the evidence produced against us, your lordships, in the end, we hope, will find turn strongly for us.

There is one thing which I take for granted, from the nature of the evidence that has been offered, that it is admitted as fully by the counsel for the Bill (as if they had said so in express terms) that there is no legal evidence against his lordship in all they have offered; or else this extraordinary method of proceeding, and this new sort of evidence, had never been set up. Nay, I am sure, it is a sort of force upon those learned gentlemen, so well versed in methods and notions of law, to maintain so many gross paradoxes, which have not the least colour of a legal, or even a reasonable evidence, and would never be allowed, they well know, in any court of law or equity. And though your lordships have been pleased to permit those papers and letters to be read, your lordships did not (as I apprehend) finally declare or determine them to be evidence; but were willing to hear all things, and afterwards judge how far it was reasonable or fitting to admit them as ingredients in your lordships' judgments. And whatever opinion your lordships might be of on the two former Bills, as we are strangers to them, so we hope we are not precluded from offering any thing farther, why they ought not to be allowed in this case. If it be your lordships' pleasure at last to adhere to that opinion, or to resolve the like in this case, we must submit.

If there is any thing certain in law, or agreeable to reason, it is this, that in all criminal charges, the evidence ought to be clear and positive; and that the higher and more heinous the nature of the charge is, the more clear and undeniable the evidence ought to be by which a man is convicted. Now I beseech your lordships to consider at one view (as far as it is possible in such various and perplexed facts) the methods made use of to prove his lordship guilty, and what they have offered to your lordships under the name of evidence. Where words have been capable, and sometimes where they have not been capable of two senses, an arbitrary and invidious interpretation has been put upon them. Where words have been plain and proper for the occasion, and which, considered separately by themselves, it was impossible to put a criminal gloss upon, the writer is supposed to have some mysterious meaning or double entendre; or else they are complicated and thrown together with those which will infer some criminal meaning. In other letters the names and words relative to men, are supposed to be used for those of women, and the proper and usual appellation of women for those of men; and because one fictitious name will not answer all they would have it, the names are often shifted; one and the same person is supposed to pass under seven or eight different denominations: and often two or three names in the same letter, within the compass of two lines one to the other, are urged to stand for the same person. Some letters which are writ of another, and speak in direct terms of a third person, they would have to mean the writer himself, though as often without any name, date, subscription, or superscription at all. Books of account, manuscripts, and common mercantile terms, which seem proper for the person and the occasion of the correspondence; and the name of stocks, which every one know the true meaning of, and carries all the appearance of reality, are very particular and exact in the current prices at that time, by a new kind of metaphor, are to be taken in an ill sense. Others, which are only to be informed of the distemper of a

traced up to some of the contributors, or to the hand where it was deposited, especially when it is charged upon a person not used to deal in merchandizes, or remittances. Though the counsel for the Bill have slid over this, yet being often repeated in the Report, as if there had been some weight in it, I thought myself obliged to take notice of it, though it is so incredible, I confess, that it is scarce worth removing.

Of Neynoe's informations, your lordships may observe there are four, but none of them sworn to nor signed; and it was expressly resolved, in lord Audley's Case*, by all the judges of England, that no examination, without oath, ought to be read except of the party himself that is tried. They are all either of a date subsequent to his lordship's commitment, (and therefore till then thought inconsiderable, and not worth reducing into writing,) or else they are of no date at all. One of the two without a date appears manifestly to have been taken after he was seized, and brought up from Deal in September, which sufficiently shews what just distrust there was at that time of his credit; that on the 27th of September, was on the day before he drowned himself; and both when he is known to have been under the greatest terrors and apprehensions, in that he was not able to make good what appears by the paper (marked E. 11, and found afterwards in his pocket) to have been undertaken by him, or required of him. It is not said, as to one of his examinations, before whom it was taken: Another of them, and the only one they now think fit to make use of, is an extract only from three other papers, and said to contain the substance of them; but the papers themselves, out of which it was extracted, do no where appear. And there are some particulars in the Report of that honourable committee which he is said to have confessed, which do not appear in any one of these examinations, and are of such a nature as to affect the credit of all he said, and (if produced) would, we doubt not, in other respects entirely blast the credit of his testimony. And, my lords, if the examination of a man is thus taken to pieces, the antecedents and the consequents left out, treason (and what not) may be made and inferred from the most innocent things and expressions.

But his examinations, even as they be in the Appendix, are full of inconsistencies and absurdities: Inconsistencies, I mean not only with Pancier's and the depositions of other persons, but even with themselves. For Pancier says, little passed in writing in the conduct of the whole affair: Neynoe says, there were many bundles of letters that Mr. Kelly brought with him from France, and which he had seen him write at several times. But yet they are much more inconsistent with themselves; for instance, Neynoe says, in his examination, marked E. 7, that he had seen several letters written by Kelly, and sent to him from Paris, and other parts, but they never contained any thing material: And yet in E. 8, he says, that he had seen several cyphers of Kelly's, and seen him make use of them; and that Kelly with great freedom acknowledged they were for carrying on the correspondence with the Pretender's agents. Whereas it is utterly incredible that a man, who had really been so communicative in his discourse, and of his cyphers, should yet be so reserved as to hide from him any thing material in his letters. In the very same examination (he says) he was well acquainted with one Watson, *i. e.* the late earl Marishall, and lay several nights with him; but after all his intimacy, at last it comes out that he did not know really who he was. There are some other inconsistencies, which have been already taken notice of by sir Constantine, which I shall not repeat.

But, my lords, if the persons and credit of Neynoe and Pancier were unexceptionable, yet what they say is only hearsay, or mere affirmation; and was ever that allowed as evidence in any material point by any law, or in any court in the world? It is expressly resolved in the Trials of Langhorn*, and lord Russel, to be no evidence; and that it is the first time it ever received so much countenance as to be read in judicial proceedings; and I dare say, there is no such practice in the courts of Inquisition abroad. Even common fame and reputation is but of little weight in any case that I know of. It may, my lords, be a sufficient ground for an officer of the peace, in some few cases, to arrest a person, or for a vigilant ministry to make enquiries, *i. e.* to accuse or apprehend; but was never yet allowed to be a guide in judicial proceedings, or to condemn any man in any criminal case whatever. But even when the Commons (in the case of the duke of Buckingham, 1 Car. 1) had declared, that common fame was a good ground of enquiry, it was complained of, and the Commons afterwards receded from it, and proceeded upon the examination of witnesses, and other evidences, and in every article of their accusation the particular facts are expressed. Much less will your lordships allow the hearsay of one single man, and only extracts of that hearsay, to be of any weight, nay, to be of more weight and authority now he is dead, than if he were living; for if he were living and could only depose by hearsay, no one surely can say it would be admitted as evidence; but since he is dead, and we have no opportunity of cross-examining of him, why ought not his lordship to have the advantage of it, as was resolved in the case of the King against Pain?† Or like the known case of a man dying in execution, the law is satisfied, and his creditor is without remedy? And it cannot be denied, but if one of our witnesses had died, and a person had taken minutes of what he could say, we should not have had the

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But, my lords, there is still something more strange in what is now attempted; for the persons of whom it is pretended they heard all this, and into whose testimony it must all be resolved, are now both living, and are so far from supporting what it is pretended they have heard from them, that they absolutely deny and contradict every word of it. One of them has already done it (if my instructions are true) in the most solemn manner at your lordships' bar, and the other is now ready to do the same. And Neynoe was so conscious to himself of the falsity of what he had said, that he lost his life to avoid the punishment that might otherwise have fallen on him, (for his flight, my lords, can admit of no other sense or construction.) He could not apprehend himself in danger, if what he had said was true; but, on the contrary, had reason to expect rewards, if he could make out the truth of his information. Charity forbids me now, my lords, to say any more of him, unless it be thought requisite to prove the falsity of his information by his own free and voluntary confession, often repeated and confirmed to strangers and indifferent persons. And (if my instructions are true) we have those that will speak most fully to it.

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The second head of accusation against his lordship, is from three letters supposed to be dictated by him, of the 20th of April. The first to Chivers, interpreted Dillon, signed by the name of Jones; the second to Musgrave, interpreted Marr, signed Elington; a third to Jackson, explained to mean the Pretender, signed 1378, and sometimes it is printed 1367; and therefore which of these two is right I cannot tell.

Before I speak of the letters themselves, I shall mention one word as to the manner of their conveyance: they are said to be enclosed in a packet to one Gordon of Boulogne, in a letter from Kelly himself, sent by the ordinary post, and signed with a name, which they say he most usually signed and went by. This is so improbable, that out of eight or ten names they are pleased to give him, he could bethink himself at that time of no other name to sign a letter enclosing three of the utmost consequence; and is so inconsistent with that caution and subtlety all along insinuated in this correspondence, that it almost needs no confutation. But yet (if my instructions are true) Mr. Gordon, to whom they are said to have been directed, and the only indifferent person in the case, and can be under no sort of influence from hence, has attested upon his oath, that there was no such letter or packet ever came to his hands.

And supposing these letters were sent, as they suppose, to the persons they suppose, and dictated by the persons they suppose; is there one passage in them of such a criminal import, as would be sufficient to found an indictment at law? If there is not, they are not to be made criminal by arguments, innuendoes and implications. The case of sir Samuel Barnardiston, already mentioned by sir Constantine, is expressly in point; and the reason given for the reversal of that judgment (as appears by your own Journals) is, because the information was grounded upon letters, which in themselves were not criminal, but made so by innuendoes and forced constructions. There is Crosby's case to the same purpose, before the Court of King's-bench, in the year 1695, who was indicted of treason; and the overt acts laid in the indictment, were for inviting the French king to invade the kingdom, and by sending letters and instructions, how and where to make the descent. Though the Court thought his handwriting was proved, and the matter of the papers of a very odd and suspicious nature, and the French king frequently mentioned in them, and the indictment supposed them to be contrived for to invite him over; yet they held it not treason.

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For though the late lord Marr is an attainted

person, it can't be denied but he is still in many senses a subject of England, and is no more divested of his natural allegiance, than a banished or an outlawed man: and though he appeared in open arms and rebellion against his majesty, he was not thought so dreadful a man, as to have a correspondence with him made treason or felony; but that was a peculiar favour, reserved for this reverend prelate and his friends. My lords, I would not be understood to mean, as if the most innocent correspondence with a person under such circumstances, was prudent or convenient; but I think I may affirm (even from the clause of this Bill) it would not of itself have been criminal. But (according to my instructions) this reverend prelate was little known to that lord, and never had any friendship or acquaintance with him while in England, and cannot be supposed to have contracted such a friendship since he was abroad.

That Dillon was an agent of the Pretender's, nothing appears antecedent to these letters: nor did Marr at that time appear to be one of his agents, when it was so well known (as that honourable committee observe) that he was at that time subsisted by a pension from the court of England. This pension, indeed, is said to be stopt last August; but the letter to him of the 20th of April (by whomsoever wrote) was some months before.

Indeed, if Jackson had been proved to mean the Pretender, the writing to him would be high treason plainly within the statute: but that the Pretender is not, and cannot be understood by that name, we hope to make appear fully, before we have done, even from the lights that honourable committee have afforded us.

I shall next consider the nature of the proofs to induce your lordships' belief, that these letters were dictated by my Lord Bishop: and the first they offer is, because the matter of them agrees with his lordship's circumstances at that time; i. e. his being ill of the gout, and the approaching death of his lady; which (they say) is morally impossible should suit so exactly to any one man else. These two circumstances must be allowed to be agreeable to those which his lordship was then under: but one would think, my lords, they are circumstances so melancholy in themselves, that they might have been spared, especially considering the little use or advantage that can really be made of them. But these circumstances were no secrets: every one that knew his lordship, must likewise know them; and whoever wrote these letters with a design to have them intercepted, and imputed to him (as we hope to shew the case really was) would certainly mention such matters or circumstances in them, as might be naturally thought to describe him. Or if they were written without his knowledge, (as they will be clearly proved to have been) it is no wonder, if the writer, who personated his lordship, should insert all that was proper to fasten the suspicion he intended on him.

Another proof that they were dictated by his lordship, they say, is from the subscription of the names of Jones, Illington, and the number 1378, which are all affirmed to denote his lordship; and the reason why that number belongs to him is, because the decypherer has found that number to denote the proper name or title of a person beginning with the letter R. If this is his real opinion, must that needs be the Bishop?* Is there nobody else whose name or title begins with the same letter?

But, with submission to your lordships, it seems impossible to affirm even thus much with any degree of certainty, and it must be only matter of mere conjecture. Dr. Wallis, who is allowed to be the father of the science, (such as it is) and was the wonder and envy of all foreigners, directly owns, that the whole was built upon conjectures; and he that had the best guess, was the best artist. Such, my lords, is the science of decyphering. And from such uncertain and conjectural premisses, what certain conclusion can possibly be drawn?* And it is plain, Mr. Willes is not so infallible as he pretends to be, by that number of passages not yet decyphered.

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* This reference to the authority of Wallis would have been more satisfactory, if it had been less general. I apprehend, that the speaker does not exhibit a fair representation of that great man's sentiments on the doctrine of decyphering.

In the Oxford folio edition of his Works (vol. 3, p. 659, Oxon. 1699), is the following letter; which seems to indicate a very different opinion:

"Epistolarum Collectio; Art. xv.

"Epistola Wallisii ad D. Menkenium, Actorum Lipsicorum Editorem, de Cryptographematis explicandis.

Oxonii, Jan. 1 (11), 1696-7.

"Clarissime Vir; Scribebam anno superiore ad D. Leibnitium literas; quas, quia et te quadantemus spectant, putarim eum cum te forte communicaturum. Adeoque non repeto quæ ibi dixi.

"Post eas missas; incidebam nuper in 'Acta Lipsica' pro mense Junii 1686 quæ quamvis jam diu fuerint edita, egò nuperrime vidi. Ibique reperio non pauca de me meisque scriptis benignius dicta. De quo rependo gratias.

"Ibique, post alia; de exponendis (seu, ut loquuntur, deciphrandis) occulte scriptis, verba facis; petisque, ut velim ejus rei præcepta tradere.

"Est autem ea magni laboris studiique res, magnæque (si mihi dicere liceat) sagacitatis; et quæ certis præceptis comprehendi non potest, cum ingens sit in ciphris concinnandis varietas, (et quæ crescit indies): ut ingenii quâdam sagacitate opus sit, longoque usu acquirenda: Et (quod aiunt) consilium in arenâ capiendum, pro re natâ.

"Hanc ego rem primum aggressus eram,

When we took our objection first against the nature of this new sort of evidence, the counsel for the Bill were pleased to cite a statute in queen Eliz. time, wherein they said the word cypher is mentioned. I have since looked for that statute, but could find nothing about it; and, perhaps, may be mistaken in the statute which they mean. But, my lords, I am sure they did not mention any particular trial, where it was ever heard of, or allowed as evi-

jam ante annos plus quinquaginta (quum simpliciores fuerint ciphræ quam nunc dierum) et quasi ludendo, in facili ciphrâ, (quæ prima fuit quam ego unquam viderem,) quam duarum horarum spatio superavi.

"Postea vero subinde, ut ferebat occasio, difficiliores aggresso, res successit non male.

"Quod non ita dictum est, quasi spondere ausim, omnes omnino ciphras me posse detegere: Aliquas enim (sive ob ciphras nimis perplexas, sive ob ingenii defectum, sive ob conjecturas minus feliciter positas) solertiam meam subterfugisse non invitus agnosco.

"Utcunque autem arduum sit, et difficultatis plenum, ciphram perplexam (quales sunt nunc dierum) extricare: Id tamen fieri posse ut videas; ecce, è multis, unam, quam speciminis gratiâ ad te mitto. Non quidem omnium quas reserare mihi contigit difficillimam; talem tamen, ut haud sciam, an quisquam difficiliorem (me prior) explicaverit.

"Est autem Epistola à Marchione de Bethune (fratre Reginæ Polonicæ, et Regis Gallorum ad Polonos legato,) Romam missa ad Cardinalem D'Estrees. Cujus exemplar, idem Bethunius (aliis literis inclusum) ex Poloniâ Parisios miserat, ad Marchionem De Croissy (Regis Galliæ Secretarium,) quod mihi pridem incidit in manus.

"Hanc ego mittendam selegi, quoniam plures respicit; qui omnes conscii esse possint rectene hoc præstiterim, an secus.

"De propriis nominibus uno numero designatis (et quæ sunt horum instar) nonnisi ex circumstantiis aliunde cognitis conjectare licet. Quodsi in uno aut altero numero haud recte conjecerim facile condonabitur. Nam et Scriptoris vitio (numerum pro numero ponentis, cum tamen præ oculis habuerit clavem) admissa menda fuisse liquet. Quod et sæpe fieri solet; neque id mirum.

"Hic autem habes, primo, epistolam ipsam, seu (ut loquuntur) copiam epistolæ, (ciphris scriptam prout ad manus meas pervenit) fideliter exscriptam: Deinde, quam ego ejus fecerim interpretationem; (ubi quæ scriptoris admissa menda corrigo, aut omissa suppleo, subductâ lineâ notavi, tanquam diverso charactere pingenda.) Postea, eandem cum interlineari expositione; ut videas quid quisque numerus designet; (ubi, cum admissa corrigo, aut omissa suppleo, correctionem textui insero uncis inclusam, et omissa pariter.) Clavem denique, quatenus ea ex hâc epistolâ colligitur, adjectam habes, per quam singula poteris examinare.

"Hæc scripsi, Vir clarissime, ut curiositati tuæ facerem satis. Tuus ad officia,

"Johannes Wallis."

Then follow the articles, which are mentioned in the letter; and after them, others similar.

Hoadly, in a letter of Britannicus, printed in the London Journal, August 10th, 1723, makes the following remarks on this part of Mr. Wynne's argument:

"This way of representation is not at all exact. Dr. Wallis was a very great man in all res, ects, and a very great master of decyphering; but never could be thought to be the father of an art, which was in being many hundred years before he was born. He knew it and had experienced the truth of it, in a multitude of important trials, too well, to say that the whole was built upon conjecture; in any such sense, as would represent it a mere imaginary, slight, deceitful art. In another sense, it may indeed be justly said to be founded upon conjecture; as the first trial of an artist to find out the key to a cypher, may be called conjecture, or guess; which conjecture he tries by his rules, applied to the whole writing, and does not receive it as truth, considered as his conjecture, but only as it shall be found to answer exactly in all respects, applied according to the rules of his art. If it does not so answer, he has recourse to another and new conjecture, till he meets with one that does; or till he finds by the same art the discovery to be impossible. But, indeed, the whole of this is a satire upon Dr. Wallis, under the pretence of a compliment. For he little deserved to be stiled the wonder or envy of foreigners, or the admiration of his own countrymen, if he could spend so many weary hours of hard study, in an art, which he himself, according to Mr. W. must have esteemed so contemptible, as to be unworthy of a wise man; and, assisting the state in discoveries, which it must have been unworthy of a good and honest man to have done, if he had thought them founded upon nothing but vain conjecture, and uncertainty."

By what accident Wallis was led, in 1642, to direct his attention to the art of decyphering is related in his letter to Dr. Thomas Smith, dated Jan. 29th, 1696-7; which is printed in Hearne's Appendix to his Preface to Peter Langtoft's Chronicle. This letter is the source, from which are derived most of the particulars concerning Wallis, contained in the account which is given of him, in the General Dictionary Historical and Critical.

In Davys's Essay on the Art of Decyphering, 4to. London, 1737, is inserted a discourse by Dr. Wallis, being an introduction to the MSS given in 1653, by Wallis to the Bodleian library. In this discourse, the author notices the difficulty of his art; but does not justify Mr. Wynne's representation,

dence. I rather believe that, according to the notions of those times, (for soon after the statute was made against witches) if any decypherers had appeared then as evidence, they might have been in more danger than the criminal.

But if there are any certain rules, or any reasonable methods in decyphering, I am sure it is highly improbable, that persons so cunning and wary, as these are all along represented to be, should be guilty of such a fatal oversight, as just to sign with such numbers, that all, it seems, who understand cyphers, must necessarily know to be intended for the initial letter of their names. It would, my lords, in my humble opinion, have been more consistent with that care and caution, to have made those numbers stand for quite contrary letters; and those letters to have been expressed by quite contrary numbers; and there is no doubt, but they might have made any others signify the same thing. However, since the decypherer has not shewed us by what methods he has arrived at this conclusion, it is impossible for us, by any positive or direct evidence, to confute it: But it is sufficient for us, to deny on the one hand, what he has on the other hand affirmed, without telling us the reasons of it.*

That the names of Jones and Illington belong to his lordship, is endeavoured to be proved by some passages in subsequent letters, and by refining on the matter of them, which they think is applicable to his lordship only.

I have already mentioned two of those instances, viz. his lordship's own indisposition, and the death of his lady, which are likewise mentioned in the subsequent letters, in order to fasten the imputation intended yet deeper on him. There is a third, which relates to the present of a dog.

That such a dog was sent does indeed appear; but that his lordship had received it, or saw it, or had any letter or message about it, has not been proved, and he positively denies it; and to whom, or from whom it was really sent, Mr. Kelly can best determine, and his lordship must refer himself to what he has always affirmed in his examination; and (if I am rightly informed) since re-affirmed at your lordships' bar, that he gave it to Mrs. Barnes, and designed it for her from the first, and for her only.

My lords, I should apologize for taking notice of such minute and low circumstances; but it is the evidence and nature of the proof made use of against us. I should rather have expected, that ingenious gentleman (the decypherer) would have shewn, by some rules of his art, that the whole story of the dog had been a fable of fiction, and explained it to something that was reasonable and probable, which I am sure this is not, to suppose (as the letters read to your lordships do suppose) Musgrave, *i. e.* Marr, in one part of the world, general Dillon in another widely distant one from the other, and a learned prelate, to be in such tribulation and concern for a little dog; which no way suits the characters of any one of the persons to whom it is applied; much less the circumstances of this learned prelate, who had at that time a much nearer concern upon him, from the death of his wife, and was himself in such great disorder and weakness of body. The speaking therefore of this present, backwards and forwards, with such particular circumstances, and the report of it so industriously spread many months before my lord bishop's apprehension, (as some of your lordships cannot but remember) is absurd and ridiculous upon all other suppositions, but upon the design of fastening something on his lordship, the point all along in their view.

If the writer of these letters had been really and truly informed of his lordship's circumstances, he might, perhaps more properly, have affirmed it of his lady; which it is plain the writer was not, because he speaks of her as living eleven days after she was dead. And how ignorant of them the writer really was, appears by another passage in that very letter; where he says, "Mr. Jones is come to town for a day only, May 7th." Whereas his lordship had been in town two days, and staid three more, as appears even by their own evidence, Lawson and Wood.

By these your lordships may see, how many forced inferences and constructions, and what a train of absurdities and suppositions are necessary to support one poor, and (if true) yet inconsiderable assertion, when once we depart from the sure and known rules of law!

A third way of proving these letters to be the Bishop's, is from the hand-writing, which is supposed to be Kelly's, and he is supposed to have been his lordship's secretary in these matters: Both which suppositions are destitute of any proper or satisfactory proof.

The first is attempted to be supported by the testimony of the clerks of the post-office. But before I speak to the testimony which they have given, I must beg leave to offer one word as to their manner of obtaining it; and shall endeavour not to transgress your lordships late resolution: And when I mention any words of that act of parliament, it is only to shew the cautious measures the legislature took even in imparting this power to them, and the just apprehensions they had of the abuses and ill consequences that might attend it. My lords, I am so far from endeavouring to bring them in danger of a penalty, as the counsel were pleased to object, that I am willing to suppose those clerks had proper warrants at that time, and for that particular opening and detaining. But that is all which the act gives, and the words of it are fully satisfied by such a construction, without going farther, and extending the words of the act to that which was not in the least within the intention or purview of it. It don't appear to me, my lords, I confess, how they

* As to a decypherer's giving evidence of the meaning of letters without explaining the grounds of his art, see 4 Term. Rep. 498.

are empowered to take copies (for all such acts which are in restraint of trade and commerce, are to be strictly and literally construed): But I am utterly at a loss to know, from what words of the act it can be inferred, that such copies shall be received as evidence in courts of judicature; and not only against the writer himself, but against other persons too.

A private act of parliament (though printed in Rastal and other authentic collections of statutes) has been disallowed, when it has not been examined with the record.* But, my lords, I don't know that a copy of any thing was ever allowed as evidence, but what was made by a proper sworn officer, known in law, and where every one may have access to it; and therefore, if false, may be disproved by the other side. But is there the same reason here? My lords, can the party ever have an opportunity to disprove it, if falsely copied, when the original is sent forward? Or, if it were still in their possession, have we any power to procure a sight of the original? or to have a copy of that copy? And therefore, we hope your lordships will not regard that part of the evidence, if it were material. But to consider also, my lords, what it is they have deposed of these copies; that the originals were written in the same hand with some papers shewed them; and which, they were told, were Mr. Kelly's hand-writing. Your lordships, I doubt not, observe the time when they deposed this first, viz. the 24th of August, and afterwards the first of January last; i. e. the first of these depositions four months, the other eight months, after they had seen the originals of the 20th of April: for, they were forwarded by the post, and the clerks only took copies of them, and did not detain any one original for a specimen till their first deposition; and surely that was a little of the latest: so that it rests singly upon the memory of the clerks for four or eight months. I think St. James says, "That a man may even behold his own face in a glass, but he is no sooner gone, but he straitway forgetteth what manner of man he was:" and it is much more impossible for any one so exactly and nicely to remember all the little strokes and dashes of the pen, by which the sameness or diversity of hands can only be made out.

And all Malone swears is, That he believes it to be Kelly's hand-writing; and 'tis remarkable, that his deposition is but in January last, and he left Mrs. Barnes's service in May, so that he could not have seen him write since that time. He don't say he ever read any of his writing, or at most the superscription of a letter: he might, perhaps, see him write at some distance, as he came in and out of the room; but surely, that cannot be sufficient to form a judgment of a man's hand-writing; and I am sure the improbability is much greater after nine months time. And Hutchins, the messenger, from seeing the superscription of a letter to the secretary of state, has likewise, I think, taken upon him to swear the same thing.

But supposing these persons had seen Mr. Kelly write frequently, and had, within a more reasonable distance, swore it to be like his hand, will any one say, that it is a sufficient, or even a reasonable proof, in any criminal case? But because Mr. Kelly is all along affirmed to have acted in these matters as his lordship's secretary, I must beg your lordships' patience to consider, how far that doctrine of similitude of hands has prevailed.

Colonel Sidney's Case* was the first wherein it was ever admitted as a proof in a criminal case; but that judgment was afterwards reversed by parliament as manifestly unjust. In lady Carr's Case,† Sid. Rep. 419, which was only an information of perjury, yet a letter under her own hand was positively denied to be evidence; though a witness swore he believed it to be hers. I must own, my lords, this case, at the late trial of Mr. Layer,‡ was not only denied to be law, but all men defied to make common sense of it: but, with the utmost deference to that learned gentleman that said so, I beg leave to mention the words of sir J. Hawles upon that case, who was of a different opinion: "At that time," says he, "when the Case of lady Carr was adjudged, besides Twisden and Keyling, two very eminent judges, there sat in that court sir Wad. Windham, whom all will own to have been the second best judge who sat in Westminster-hall since the Restoration; and if it is not evidence in misdemeanor, much less," says he, "in treason." Which inference, besides the reason of the thing itself, is supported by the authority of lord Coke.

In my lord Preston's Case,|| his hand-writing was proved by three witnesses, that had belonged to him while in the secretary's office, and must necessarily have seen him write a thousand times: but that was not all; for those papers were seized on him, sealed with his own seal, as he was going to France in the heat of war, contrary to an act of parliament, which at that time made it treason.

In the Trial of the Seven Bishops,§ the same question arose, whether similitude of hands was a proof in a criminal matter? and it was not admitted.

In Francia's Trial,** before all the judges at the Old-Bailey, it is positively laid down by the Chief Baron, and not contradicted by any others, that it was no proof or evidence of itself; and the letter in that case would not have been admitted, but that it was found by his bedside, and a copy of the very same letter entered in his pocket-book, which he had owned and explained to some lords of the council.

* See as to this, Peake's Law of Evidence, chap. 2, § 1.

* See it in vol. 9, p. 817.
† See vol. 9, p. 864.
‡ See his Case in the present volume, p. 94.
|| Vol. 12, p. 645. § Vol. 12, p. 183.
** Vol. 15, p. 896.

In Crosby's Case, the hand-writing was sworn to by three positive witnesses, and owned in one of the papers by the prisoner himself; yet lord chief justice Holt and the Court held it no evidence, "Because one hand," says he, "may be like another; and presumption shall never take place in treasons."

In the late Case of Mr. Layer, it is well known, that besides the proof of his own hand-writing, the treasonable papers were delivered by his own hand to the witness; and 'twas upon that ground only, they were permitted to be read against him. Besides this, he had said that before the lords of the council, which the Court thought amounted to a full acknowledgment that it was his writing. But even all this, my lords, was made use of against him but as concurrent evidence, because there were two positive witnesses, *viva voce*, against him, as to the other overt-acts.

I will mention to your lordships some foreign, concurrent authorities upon this point, to shew, that the reason and equity of this doctrine has been uniform and universal, that similitude or comparison of hands is not a sufficient proof of it. There is a famous case of Jean Millard, in a book called, 'Le Journal du Palais.' He had lived 40 years from his wife, and then returned and re-claimed her, after she was married to another. One of his methods made use of to prove him to be the same person, was, the hand-writing of letters that had formerly passed between them: which occasioned this question before all the famous judicatures of France, "Whether the testimony of skilful notaries, who fully deposed of the similitude of the hands, was a sufficient proof in this case?" and it was universally denied. And yet this, my lords, was a case highly favoured in all laws; but more highly in those places, where marriage is reputed as a sacrament, and in favour of which they will often admit even the party's own oath.

Codex Fabrianus, lib. 4, tit. 14, def. 71, says, "A proof by comparison of hands, is a very dangerous proof:" 'Idque in causis civilibus 'duntaxat; sed in criminalibus, in quibus peri-'culum majus versatur, aut capitis, aut existi-'mationis, non item.' Voet, an eminent modern civilian, lib. 22, tom. 4, §. 11, to the very same purpose. And so does Cujacius in his Commentary on the Novels 73. "The Romans, says he, never allowed it, but when no other proof could be had. And in latter times, when forgeries became more frequent, they would not allow of it at all, unless the writing had been acknowledged by the party, or proved by two witnesses who saw him write it."

And then it was necessary to bring both into court, that the judges themselves might make the comparison, and not leave the witnesses to be the only judges of it.

But it was never known, and I may defy all the writers of law to shew me one instance, that any evidence of the similitude of hands (which can only be made out by comparison) was admitted, but where the papers pretended to be written in the same hand, were produced and compared: which is so far from being the present case, that even the attesting clerks, who are the only witnesses in the case, never had an opportunity of comparing the original letter stopped in August last, with any one of the three original letters dated April 20, or with any of the intermediate letters, which they affirm to have been written in the same hand.

And if it be considered, how much more difficult it is to distinguish the hand of one writing in figures (which stand single one from another,) from the hand of one writing in words at length (which are variously connected and combined,) your lordships will never give them the least degree of credit.

But at once to put an end to this evidence (if my instructions are true,) it has already appeared to your lordships, upon Mr. Kelly's Bill, that the only original letter of the 20th of August, stopt as a sample at the post-office, and the only ground of affirming these three to have been his, was not his hand-writing; and, if need be, we have the same and stronger evidence to produce. Upon the whole, therefore, I think I may affirm, that there is no legal or reasonable ground to infer those letters to have been wrote by Kelly.

And surely, my lords, it was incumbent on them to prove, as well as to affirm, that they were wrote by his lordship's direction, before they can affect him; even though the writer (whoever he was) had presumed to have signed them with his lordship's own name and proper appellation. I beseech your lordships, how does it in the least appear, that Mr. Kelly, or Mr. Carte (as is afterwards upon no better grounds suggested) was employed by his lordship to carry on that correspondence? It has, I confess, been frequently said at your lordships' bar, as well as by that honourable committee, but like other charges, without any shadow of proof; unless it be an obscure passage in a letter of Chitwell from abroad, to one Williams here, D, 27, which says, They had a story in France of Weston's clerk being laid up for debt: which, as I shall afterwards shew, could not possibly mean his lordship. There is another passage also in the letter to Dubois, from whence the same inference is made. What unknown person that Dubois is don't appear, or whether it is a real or fictitious name; for all their lists and cyphers afford nothing like it. The committee are pleased to suppose it a letter to the Bishop, and received by him from abroad; and from thence infer, he used to receive letters directed to him by fictitious names. The counsel for the Bill suppose it a letter from himself to himself, because the hand-writing, they say, (or rather the letter *e*) is something like his lordship's. It is not signed by any one, and dated only the 16th of December without any year; and though that honourable committee are pleased to affix, in their observations on it, 1721, because Johnson, they say, was about that time at Paris, yet for what appears from the letter itself, it might be written

before his majesty's accession, or before the several acts of grace that have been; and if it had any criminal meaning, it is improbable his lordship would have mentioned the hand of conveyance at length; and much more improbable, that he should have destroyed all his other letters (as the committee are pleased to insinuate,) and to preserve this only, which is of no consequence, but to furnish evidence against himself, and to explain the thing most wanted. Another proof that it is his letter, is from a broken seal, which, they say, is made by the same seal as that seized on his servant at the Tower. But consider my lords, how many similitudes we are at least come to in this one attempt, similitude of hands, similitude of figures, similitude of characters, and similitude of seals.

That similitude of hand-writing is no proof I have shewn by a variety of the best authorities: much less, the similitude of one letter in the alphabet; that is, I dare say, a conceit perfectly new. And it is well known, artists are capable of counterfeiting any man's hand or seal in such a manner, that even the person whose hand or seal it is, shall not be able to distinguish it from his own: and your lordships yesterday saw an ample specimen of it.

It is upon these grounds, my lords, that Kelly hath been affirmed to have been his lordship's secretary in these matters; but there is not the least charge or pretence of his having writ any other letters of any kind for the Bishop but these three only, and not one throughout the whole correspondence charged to have been written by Carte, (though he is in general charged as another manager of this correspondence.) This, my lords, we must insist, ought to have had the fullest proof, and the most undeniable evidence: for it is the gist of the offence, it is the foundation of the statute 14 W. 3, c. 3, and it is the particular suggestion of this Bill. It is possible some such letter might be wrote by Kelly or Carte to the persons they are addressed to, without the Bishop's privity or direction; it is not so uncommon a thing to pretend acquaintance with persons of distinction, or to make use of their name and authority, to give themselves a greater degree of credit with their correspondents.

If this may be so, and ought now to be presumed so, since no man has proved it otherwise; then no man surely ought to suffer by the act of another, or to be punished for another man's fault.

I believe no one will think it any reflection to hear many of your lordships' names in these cyphers, and afterwards to find a frequent mention of them in the correspondence; or to find his majesty's own name in Plunkett's cypher, under the disguise of Hawkesby; and page 62 of the Report, compliments from the Pretender and his wife to one Hawkesby. No man, I say, will apply these, or many other names of persons of honour mentioned in them, to the persons themselves, or imagine those letters were really wrote by their privity or consent. By the same rule of justice, and by a parity of reason, my lord bishop's name may be presumed to have been made use of without his privity or consent; and if there is any certain rule or position in law, it is this, That all presumption ought to be in favour of innocency.

And to shew the little intimacy there was between his lordship and Mr. Kelly, (if Rig means his lordship, as they suppose, or that letter E 64, was from Kelly, as they also suppose) it will be sufficient to remind your lordships of one part of it, where the writer says, ——"That Rig and one Skin had been together; but the result of their meeting he knew nothing of. Rig had fixed his suspicion somewhere, though I cannot find out the place; but you will hear it from Skin, to whom, it is probable, he may have communicated his sentiments that way." That is, my lords, if I understand the meaning of these words, that Kelly, the supposed secretary on all these occasions, knew nothing of the matters, or at least much less than Skin, whom Kelly had but just before introduced into Rig's acquaintance.

There is another letter which has likewise been read, E 47, (if it is to be understood to be Mr. Kelly's, as they suppose, and Rig is to mean his lordship; though we are far from admitting the one or the other) which we desire to make use of, and amounts to a full and direct confession, that the writer (whoever he is) had nothing in his power or knowledge to charge him with. I have the more countenance, my lords, to repeat the words of this letter, because that honourable committee have let it pass without exception, fol. 59, of the Report: wherein the writer vows, "He never heard of the cant names of Jones and Illington, or who was meant by them: that some persons in whose power it was to do for him, had shewed no concern at all for his misfortunes; that it was well he had no secrets to reveal, since such usage might provoke a passionate man." And all the world is since convinced he had not, since no person seemed to be apprehensive that he could do them any mischief. My lords, I say, if this letter is to be understood as from that gentleman, we think we are intitled to have the benefit of his open and candid declaration.

But however, my lords, if we should not be allowed to make this use of it, yet (if my instructions are true) Mr. Kelly fully asserted this himself at your lordships' bar; and even without it, we shall be able to make appear most plainly, in the course of our evidence, that Kelly did not, and could not write those three letters from his lordship's mouth, or by his lordship's direction.

The date of all three is 20 April; when this reverend prelate (as has been already mentioned to your lordships) was deprived of the use of both hand and foot: had for a great while been confined to his room, under the greatest weakness and disorder, when his lady lay in the next room, on her death bed.

These, my lords, and other remarkable cir-

cumstances in his family which distinguish this particular period of time, as on the one hand, they have given the writer of these fictitious letters some advantage towards fixing them on the Bishop; so on the other hand, they afford his lordship a like advantage (in the most providential manner, I may say) towards clearing himself from the imputation of them. Because his servants then attending him, are able to recollect what passed on that occasion, and to be very positive and particular in their evidence concerning it.

His lordship happened then to have three men-servants actually attending on him, and some one of these always, both day and night, either present with him in the room, or waiting in the passage at his chamber-door; and the weather being warm, and the room close, the door was generally wide open: it was then this reverend prelate's misfortune, that he was not able, without their help, to stir, or even to lift up what he eat or drank to his mouth. Besides these, there were two women-servants, which constantly attended his lady in her room, which is next adjoining, and came frequently to him (once or twice an hour) every day with accounts how she did, the Bishop himself being disabled (for several days before her death) to go out of his room.

And all these five servants will depose, that for 14 or 15 days before his lady's death, no stranger whatever visited his lordship, much less stayed there any time with him. This (my lords) the women-servants will affirm, as far as their frequent seeing of him gave them opportunity to make these observations. His coachman (though now witness against him) has constantly affirmed the same thing, both below, as well as before your lordships. But the three men (one of which was always in the room day and night, as I before observed) can be most full and peremptory in their testimony. So that the Bishop could not possibly dictate these letters, either to Mr. Kelly, or to any body else, without the privity and observation of some of them.

This being a negative, it is impossible to be more fully proved in any case; and nothing but the remarkable circumstances which happened at that time, to which the writer of those letters unluckily pinned them down, could have helped us to so strong and undeniable a proof of it.

Whether Mr. Kelly was ever acquainted or visited his lordship, indeed I am not instructed; their evidence, I am sure has proved nothing like it, nor is it material, much less criminal. But as to the particular time (12 April), when Mr. Kelly is supposed to have told Mrs. Barnes, and she is supposed to have told Mrs. Levett, that his lordship sent his coach for Kelly, we shall expressly prove the contrary: and besides that is only hearsay of Mrs. Levett from Mrs. Barnes who denies it, and his lordship's disability at that time to receive company; I say (my lords) besides these circumstances, it is remarkable that the coachman and the baker (who it seems were directed to keep a diary of every body that came and of all that happened in his lordship's family) say not one word of this remarkable incident, in either of their depositions. The coachman has denied that he ever fetched Mr. Kelly in his lordship's coach since he lived with his lordship, or ever was at Kelly's lodgings, or that he ever saw him or Mr. Carte in his life-time; and surely their silence (if there were nothing else in the case) is sufficient to infer, that he was not there at that time: and all Mrs. Kay and Malone swear is no more, than that they don't remember Kelly lay at Mrs. Barnes's that Thursday or Friday (the first only speaks in her printed deposition of a Thursday or Friday about the middle of April). And how is it possible they should remember the time so exactly, for neither of them belonged immediately to Kelly, but were only servants to Mrs. Barnes, who had other lodgers in her house? They did not even make these affidavits till the 6th of February last; and it is no easy matter to remember such an inconsiderable circumstance of a lodger (ten months together) unless they likewise had been instructed before-hand to keep diaries of Mr. Kelly's motions.

The third general charge against my Lord Bishop, is the receiving of letters from abroad relating to this conspiracy.

Two instances only of this kind have been produced. The first from Motfield (interpreted Marr) 11th of May, addressed to Illington.

The other from Digby (supposed to be Dillon) 14th of July, addressed to Mrs. Weston. Neither of which (do they pretend to say) came to his lordship's hands, or if they had, that there is one criminal word contained in them, and consequently could not be (as I before proved) a treasonable correspondence, within the letter or intent of any law.

That of Motfield's is a mere letter of friendship, (and (if from lord Marr, as they suppose) is to a person with whom he never had either friendship or acquaintance; but really seems designed for no other purpose but to fix upon his lordship the letter directed to Musgrave of the 20th of April, (for the same reason interpreted Marr) the receipt of which is there acknowledged; and in his words of condolence there is something, which, it is said, points out his lordship's character and function, though, in my humble apprehension, no more applicable to his lordship, either as a bishop or a clergyman, than to any other person; especially if it be considered (as it really is) the style of a letter of compliment. But if the letter itself, to which this is pretended to be an answer, should prove to be a mere fiction, the answer to it (though it were criminal) must fall with it, as a part of the same contrivance.

And as to the letter from Digby to Weston, though that honourable committee seem to lay some stress upon it, by printing it at length in their Report, yet there is nothing in it that can affect any man criminally, but his lordship not at all; because the passage in it relating to

his health, and the concerns of his family, cannot possibly be applied to him. It implies that he was then in a very ill state of health (July 25,) and his family in great disorder; whereas his lordship (I can speak it, my lords, upon my own knowledge, as well as the testimony of several clergy of his diocese, and others) was then perfectly well, and able to transact all the ordinary business of his diocese and deanery, and had been so for above two months, having myself the honour at that time to be concerned with his lordship in a very tedious and intricate enquiry; and the disorder in his family (if it means the death of his lady, for that or nothing is meant by it) had been over a much longer space of time.

Nor is it probable that such a mistake should be made by the person (whom the name of Digby is supposed to denote), if what the Report p. 39, and the Appendix D. 32 and 29, informs us, be true, that two letters had some time before been written to Digby, or his secretary, the one (July 4,) assuring, Weston was never better in his life, the other (14 July) affirming he was then perfectly well. But it is still more improbable, if your lordships will consider what that honourable committee have justly observed, in the very same leaf, that the professions of these two correspondents were so foreign and different, as to lay no sort of foundation for intimacy or intercourse between them; and the natural and only conclusion (we think) from hence, is, that the letters on this head, either from this or the other side of the water, cannot be genuine; and that no fair or regular correspondent could be guilty of such gross mistakes.

And of both these letters from Motfield and Digby, your lordships have (I doubt not) observed, that there is no pretence of proof, concerning the hands in which they are written; which surely would have been more requisite, than the application of feigned names, to ascertain them. Otherwise any one who was acquainted with such names might write letters from the other side, as coming from the persons designed by those names, which they themselves were ignorant of.

And as the receipt of these letters by his lordship has not been proved, so there is not any insinuation or pretence that he ever answered them, though they both bear date long before his lordship's commitment.

This part of the scheme, therefore, for charging his lordship with a foreign correspondence under fictitious names, was not so artfully contrived as the former; and seems, by so many grosser mistakes, to have proceeded from somebody that had a much worse intelligence concerning his lordship's affairs.

I shall here beg leave to take notice of the letter taken from one of his lordship's servants in the Tower, on which the learned counsel have laid such great stress, because there were no professions of his innocency in it. If there had been, I suppose they would not have been much regarded. Why therefore should it be any argument against him, because there is no such thing? Matters are at a very low ebb, when such trifles are relied on. But there is another reason. The letter I suppose to have been intended for some near or intimate friends, and to such persons there was no need of making such a profession. They knew (whoever they were), and were before sufficiently persuaded of his lordship's innocency, and that it was impossible he should be guilty of what is laid to his charge. And by what has already appeared to your lordships, I may say, this reverend prelate had no need of making such an apology, and that the persuasions of his friends were not ill-grounded.

The fourth head, to which the charge against his lordship may be reduced, is the coincidence of circumstances, times, and feigned names in the intercepted correspondence, to induce your lordships' belief of the before-mentioned hearsays and supposed facts, that his lordship, and he only, is meant by that correspondence. And the chief observation about the co-incidence of times and circumstances relates to the three letters of April 20, his lordship's illness, and the death of his lady, and the present of the dog, about the same time. All which have already been accounted for, either as truths publicly known, turned by ignorant or malicious correspondents to ill purposes, or as absolute falsities, as will appear to your lordships by our evidence.

1. As to the article of times, of his lordship's coming and going, it must be owned, the penmen of these letters are sometimes right, but they are as often wrong, and the mistakes are of more consequence to destroy what is inferred from them, than the real agreements, in point of time, are or can be to establish it. There is no doubt, but the correspondents on this side (whoever they were, and whether out of malice or vanity) apprized themselves as well as they could of his lordship's motions, in order to give a colour of probability to what they said of him; and yet it happens, that out of seven instances occurring in these letters, and referred to in the Report, three of them (if not four) are plain and gross mistakes: Two only are true in all their circumstances; and of the other two, it may be doubted whether they answer the truth in every respect, or not.

First, as to the two doubtful instances, one is 49 pag. Rep. D. 39, where June 14, G W. writes to Quitwell, "Mr. Weston is in the country, I saw him two days ago." If these words mean, that he saw him two days ago in the country, (which is the most obvious sense of them) then the assertion is false; for his lordship came to town June 12, as appeared yesterday by the coachman's book: But if they mean, I saw him two days ago in town, then the assertion may be true.

The other instance is Report 51, 52, D. 14. Somebody writes July 26, to Maisonneuve, that Rig and Skin had been lately together, and that Rig went into the country the day after. Now by depositions D. 48, it appears,

the Bishop went out of town July 21; they must have met therefore on the 20th, which don't well answer the word lately, which one would think imported 6 or 7 days more. And therefore these two instances we set aside, as neither plainly true nor plainly false. The three next are manifest mistakes.

In Hatfield's letter to Musgrave, May 7, it is said, Mr. Jones is come to town only for a day, and yet (if Jones means the Bishop) he had been in town two days and staid in town three days longer; for he came 5th May, and returned 10th May, as appears by Lawson and Wood's examination.

So in a letter of J. H. to Dixwell, June 12, it is said, Rig (supposed to mean the Bishop) is, I hear, in the country; whereas his lordship was at Westminster, June 18 and 19, as appears by the coachman's books,

In a letter to Maisonneuve, July 19, F. 59, Rig is again said to be in the country, whereas his lordship was at Westminster that very day, and continued there till the 21st, as appears by the same printed depositions.

And the mistakes in these three instances, are the more remarkable, because they all affirm his lordship to be in the country, when he positively was not; whereas it was ten to one, but that even mere guesses had been true, at a time of year that every one almost is in the country; and his lordship was really ten days in the country, to one that he was in town, during the whole summer.

But, my lords, I must with some regret take notice, that none of these mistakes are acknowledged in the Report of that honourable committee, though all the letters and passages are transcribed in it, particularly that of the 7th of May, E. 42. These words are inserted in the Report, page 41, "Mr. Jones is come to town" but the following words "only for a day" are omitted: and yet the section concludes, that it agrees with the enquiry made at that time; which indeed it does (as far as it is there quoted) though not with the Append. E. 42.

What enquiry of this kind was then made, and with what views, we cannot say, unless we may suppose it to be made by his neighbour Lawson. If it was, it is strange that he could not depose from his own knowledge and observations in May, but only as to what he had heard and was told by Wood, his lordship's coachman, so lately as the 19th of February last. I would reconcile this if it be possible: And the most natural inference I can draw from it is, that Lawson (or whoever that inquirer was) had pretended to take some account of his own at the time mentioned by the committee, which, upon comparison with that of the coachman's, he found to be manifestly false and erroneous, and therefore would not produce or depend upon that: But we hope his testimony can receive no advantage from such a conduct. And upon the whole it appears, that though more industry has been employed on the article of enquiry, yet as many mistakes have been made in it, as in any other.

And as for the coachman's book, after all it cannot be entirely relied on: because the entries made in his book can only relate (as we apprehend) to the charges of turnpikes and ferryings, or such other matters for which he was accountable. He had no reason to take notice in such an account, when his lordship was in the coach, when not; and your lordships have heard, cannot be positive on that head. And therefore how exact soever his accounts may be, in respect to those little disbursements, they can add no weight to the observation drawn from them by that honourable committee; and though great stress has been laid on them, (with submission to your lordships) they amount to no more, than that some persons on this side the water, writing to some on the other side, are supposed to mention his lordship, sometimes as in town, or in the country: and from thence it is inferred, that they had frequent access to him, and consequently the matter of their correspondence is imputed to him.

Had these correspondents been exact, my lords, in all their accounts of his motions, surely no such conclusions could have been reasonably made: But as they are oftener wrong than right, it follows, they were not so well acquainted with his lordship, or his circumstances, as (to serve their evil purposes) they pretended to be.

Having thus spoken as to the circumstances of times, (which are thrown in to induce a belief that his lordship was meant by that correspondence) I shall next offer something as to the cant names: And though it has been already observed to your lordships in various instances, that the names of Jones, Illington, and Weston, could not possibly belong to him; yet give me leave, my lords, to say further, that Jones is not only a very common name (for in one society, I think, I remember no less than sixteen of the name at once), but that name is manifestly applied to very different persons, even in the papers contained in the Appendix. In Plunkett's cypher Jones denotes the Germans: Twelve or fourteen times it is supposed to denote the duke of Norfolk, in three other places to denote sir W. Ellis; and even in the letters imputed to Kelly, there are passages (besides those already mentioned to your lordships) which cannot with any reason or probability be applied to his lordship: For instance, D. 23, Jones and Illington are, within the compass of two lines, plainly distinguished as two different persons, and therefore both cannot be applied to his lordship. And in the same letter, as well as a preceding letter, D. 18, Jones is mentioned as having undertaken to do something for a boy at Eaton, where it is well known his lordship has no influence or acquaintance; and if he had interested himself there on any such account, it would easily have been discovered. And this, my lords, is one strong instance, to shew the ignorance of the writer, even in some of his lordship's most notorious circumstances.

A great deal of pains has likewise been taken by the help of divers suppositions and reasonings, to prove that Rig denotes his lordship. However, I shall take notice but of one, in the letter to Gerrard, which is said to be sir J. D'Obrian, Report 49, E. 47, where something is said of Rig, highly improper, and absolutely false, if to be understood of the Bishop. An account is said to to be given of the difficulty Kelly had to get bail, and it is added "Your old friend Rig indeed offered all that could be expected of the poor man." (If my instructions are true) D'Obryan is a name his lordship never heard of before, nor had the least concern in procuring Kelly's bail, nor knows to this day who they are; the only words applicable to him in this passage, are those of Poor Man; and his lordship permits me to say, that he is really such, poor both in body and purse, and as poor as his enemies almost can make him: and though he may have reason (if your lordships should pass this Bill with all the severities intended by it) to be heartily sorry he is so, and that he has neglected those opportunities of enriching himself, which others would have laid hold of; yet he gives me leave, my lords, to say, he is not ashamed of that poverty, because free from all unjust acquisitions, and unworthy compliances. But that he was a poor man at that time, *i. e.* unable to procure bail, (which is the sense that writer means it in) cannot with any decency or justice be applied to one of his lordship's interest and station, if he had concerned himself in it.

Give me leave, my lords, to take notice of another mistake of that honourable committee in the very same letter; I mean a passage cited from it which is not in it, to prove that *Rig* and his lordship are the same persons; which I should have omitted, but that it breaks at once the chain of reasoning there made use of. The words are, "how far this late affair may affect him (Rig) I cannot tell," and E. 47, is cited for them. Now E. 47, gives an account of Kelly's examination promiscuously with other matters, and was written June 11th; but the letter where the words really are, is E. 40, of the 18th of June (near a month after Kelly's examination). Nor is there a word in that about the dog; but it might be proper to confound these two letters, and connect these two particulars in order to make out, that Rig and his lordship are the same, though they have really no relation one to the other.

We might add, my lords, many gross errors in the application of names: but if your lordships are satisfied with the justice of those already mentioned, (as I hope your lordships are) there will be no need to regard the rest; for although they have some little co-incidents of time, yet they are dashed with so many inconsistencies, and so many falsities, that no fair correspondent could be guilty of. But there is one which of all others bears hardest upon this reverend prelate, the most criminal in the matter of it, and from which he is most deeply concerned to clear himself; *i. e.* the letter of April 20th, which has been over and over affirmed by that honourable committee, as well as by the counsel for the Bill, to be a letter to the Pretender. If that be so, and had been proved by any degree of evidence to have been dictated by his lordship, we should have been utterly at a loss what to have said, in a case that would have been so fully within the letter of the law. Part of it, my lords, we have already shewn to have been charged on his lordship without the least proof or shadow of evidence; the other part of the charge we hope now to prove equally groundless and false.

That the letter addressed to Jackson was not to the Pretender (whomever else it may mean) we think, appears clearly from the words of it, "our circumstance on this side;" a phrase not only used by all writers, but is the constant, usual style throughout all the papers in the Appendix, in contradistinction to France, which is the other side, but never to Italy, as the case must be here, if Jackson means the Pretender. The instances in the Appendix are almost infinite.

Another reason why we think the name of Jackson cannot reasonably be supposed to denote the Pretender, is from E. 30, where there is mention of dividing Clinton's money between Medley and Jackson; *i. e.* says the Rep. p. 54, between Ormond and the Pretender. But it is not to be imagined, that a letter written from one devoted to the Pretender's interest, should place Ormond before him; this is so unlikely, that even the committee, speaking in their own persons at the bottom of this very page, slide naturally into the other way of placing the words, the Pretender and Ormond. Besides this, my lords, there are so many familiarities [to mention but one, all such pretending people] in the letter itself, that it could never come from any one (as I before said) devoted to that interest, at least not to the Pretender himself, but to some equal, or rather to some inferior. Jackson therefore must mean somebody else, somebody in France, and not the Pretender in Italy; and on this supposition, every word and phrase of that letter is better accounted for than on any other.

The committee of that honourable House below, have been pleased also to observe, p. 45, 46, that Jackson appears from other letters to be the same as Malcolm (which they say means the Pretender), and for this reason, because (p. 54, E. 30.) Clinton's money is to be divided between Medley and Jackson. And p. 56, somebody hopes Clinton has sent Malcolm half money; which proves, indeed, that either Medley or Jackson means Malcolm, but which may be still a question as much as it was before.

That Malcolm means the Pretender, it is proved, because application is made to Malcolm, in a letter from Scotland, for a patent, and for power to raise a regiment, Rep. p. 45, 75. But with submission to that honourable committee, neither of these instances prove that assertion; since the most natural way of applying in such cases, is to persons employed

under the principal, and not immediately to the fountain head itself: and if the late duke of Ormond was to have come over last summer to head the Scots, and they daily sent pressing messages to that effect, (as Mr. Stanhope writes from Madrid, Rep. p. 75,) who more proper to be applied to by a Scotsman on both these occasions? Malcolm therefore (with submission to the committee) more naturally means the late duke of Ormond.

I may add to this, my lords, that in the cypher inserted among the Scotch papers, I. 14, Davis and Lloyd (not Malcolm) is said to be the name and designation of the Pretender.

I hope we may be allowed to argue in this manner, from one cypher to another, because the same method has been made use of against us, upon this very article, both by that honourable committee and the counsel for the Bill: for the only colour there is for interpreting Jackson to be the Pretender, is taken from Plunkett's cypher, in which, as it is printed, Jackson is set over-against the name of the Pretender, and from the titling to the draught of a letter of Plunkett's to Jackson, C. 41, and admitting this letter to have been so entitled by himself, (which has not yet been proved) yet it does not follow, as I observed, that because a letter addressed to one at Rome by Plunkett, under the name of Jackson, signified the Pretender, that another letter directed to one of that name in France, by a quite different person, should likewise necessarily signify the Pretender. This, my lords, I beg leave to say, is no certain or natural consequence: but it is most certain, that that draught, whomsoever it was intended to, was not written upon that cypher which the committee referred to, in order to have it thought to have been written for the Pretender; for there is but one only of the many cant names in the whole letter which is to be found in that cypher. But if your lordships will be pleased to consider that cypher a little farther, it will appear, that the very persons supposed to be concerned in dictating this letter to Jackson, were utterly strangers to the correspondence; for it consists of 150 names, and no man can find above four that are in this cypher, or in all that voluminous correspondence attributed to Kelly, nor any of those four ever used in the letters supposed to be writ by Kelly; but in those only supposed to be written to him from abroad.

The name of Jackson is not once in all that correspondence applied to the Pretender: and though there be a hundred proper occasions of mentioning him, it is always under some other appellation. And Plunkett himself, in his examination, C. 78, sect. 14, (when he could not possibly know the tendency of the question) not only says positively, that he never writ to any person by the name of Jackson, and does not know who is meant by it, but it is also remarkable, my lords, that in all the letters said to be written by him upon that cypher (after it was formed) he never once stiles the Pretender Jackson, but either Joseph or Jephson.

The first of these letters is in May, 1721, and therefore that honourable committee have with great exactness placed this cypher immediately before it, as supposing it about that time framed; for all the preceding letters are manifestly written upon another cypher. Now this letter of the 20th of April, supposed to be dictated by his lordship, was written before that cypher of Plunkett's was framed, and consequently could not take a name from a cypher which then had no existence.

There is another observation of that honourable committee, which I beg leave to take notice of. They say, that the cypher made use of in this letter to Jackson is the same made use of in the letters from the late duke of Ormond's agents, and in letters to Dennis Kelly; and yet the Pretender has some other names in such letters, but in none of them ever once stiled Jackson. How comes it then, my lords, that he should be stiled so once in this one letter, and never before nor after by that writer, or by any other?

We have been the longer, my lords, in removing this imputation, because of all others it is the hardest and most unjust upon this reverend prelate; and upon the whole, we hope it is fully and effectually done (notwithstanding the difficulties we had of proving a negative,) and even from those lights and materials the committee themselves have afforded us: and if we had had an opportunity of inspecting the originals, we doubt not we should have been able to have proved much better, that Jackson, to whom this letter of the 20th of April was directed, could not possibly mean the Pretender.

And if that be the case, as it certainly is, and it appears farther by the evidence which we shall produce, that these three letters of April 20th, were not and could not possibly be dictated by the Bishop, the foundation of the whole Charge is destroyed, and consequently all the superstructure must fall to the ground. Nay, I will venture to affirm, that it is impossible for them to form any scheme to prove the Bishop wrote these letters, but what is and will be actually disproved and falsified, by some part of their own evidence.

Having thus, my lords, gone through every part of the Charge, I must crave your lordships' patience yet to speak to two things, which have been much insisted on by the counsel for the Bill. That when your lordships proceed in a legislative capacity, you are not to be guided by the rules and niceties of law, and therefore that we are not in this case to expect an evidence strictly legal. The other thing was, that at this time of day, circumstantial evidence is sufficient in a charge of high treason, as the case now before you is. This, my lords, we have heard fully and often repeated, as it were, to anticipate us in this objection, which they themselves knew to be so justly founded.

I have so far acted in complaisance to them, as to argue chiefly on the facts and circum-

stances themselves, and under the very same lights they have presented them to us, and hope, my lords, our inferences from them have been more just, our construction more natural, and our probabilities much greater than theirs; and even in that view (considered abstractly from what the common law and the common justice of the realm requires,) I hope we have fully shewn to your lordships' satisfaction, and to the conviction of every reasonable or impartial person, that there are no grounds for what is suggested in the Bill; and that all who hear me may justly wonder, how this reverend prelate comes to be charged (as he is in the preamble of the Bill) with being deeply concerned in forming, directing, and carrying on a conspiracy; when it has not been proved, that he entered into any one consultation concerning any one measure, gave any one direction, that he has done any one criminal act, written, dictated or received any one criminal letter; and if we should wave insisting on an evidence strictly legal, or a proof according to the known rules of law; give me leave to say, my lords, because it is true, there has not been a reasonable evidence.

But yet, my lords, I shall always insist, both as an Englishman, and as counsel to this reverend prelate, there ought to be a legal evidence in these, as well as in any other criminal proceedings. If there is any difference, it is in this only, that as there are certainly many greater inconveniencies to the subject in this method of proceeding, there ought to be a stronger proof, and a conviction more strictly legal. I will always hope your lordships will expect a proof in such heavy charges, agreeable to the laws of the land, and the rules and resolutions of other judicatures. I am far from thinking your lordships are circumscribed by the forms of inferior courts, because they are in their own nature discretionary, and the courts themselves often vary and depart from them. But the fundamental maxims of law, the unalterable measures of justice, and the positive directions of an act of parliament, are of another nature; they are binding every where, to all persons and authorities, (as long as they continue laws) the king himself not excepted. I should beg pardon for carrying my assertion so far, but that I am taught by the Bill of Rights that the king himself is bound by the law; that it is not in his power to alter, suspend or dispense with laws. But if the doctrine of the counsel for the Bill is true, and every one at liberty to follow the dictates of his own judgment, and what rules he pleases; what confusions, uncertainties and arbitrariness must that introduce in all proceedings! Private opinion will too often be a pretence to exercise private malice, revenge or ambition.

I might appeal to every one that hears me, whether he has not at some time or other believed some things as strongly, as he did at first this reverend prelate to be guilty of what was suggested against him, and has afterwards found himself mistaken? What is more common than for men that agree in the same notions of morality, to deduce different conclusions and applications from them? (even where interest or partiality do not intervene;) and therefore the wisdom of the law of England has been, to determine general notions of justice and right by particular rules and applications, in order to settle that variety and inconstancy, which without some established rule, must necessarily follow. Where then shall we go for true and proper notions of law or equity, but to those great oracles and fountains, my lords the judges? What better guide or more certain rule can any one of your lordships propose to himself, than the constant and uniform judgment of those whom the constitution of this kingdom have made the proper dispensers of justice, and the interpreters of law?

It is your lordships' peculiar advantage, to be continually assisted by some of my lords the judges; and we hope in this instance (if any doubt can at last remain) your lordships will hear their opinion with the same deference and candour as in former cases. Let it never be said, my lords, that you who are the supreme oyer of the kingdom, whose judgments and resolutions are laws to other courts, and ought to be an example to all others in the justice and equity of your proceedings, that your lordships will not regard the solemn judgment of the judges, or the usages of former parliaments: and let it not be said, that because other courts are bound by a law to require such and such circumstances to infer an offence, or such a proof before they condemn a man, that you, my lords, will follow your own private opinion, make what you please to be an offence, without any evidence at all, but upon mere hear-says, conjectures and suppositions. Who can read that melancholy case without concern, which my lord Coke has in his 3d Instit. of an uncle that was condemned and executed for the supposed death of his niece, merely upon a train of presumptions and circumstantial evidence; or Harrison's case, within memory, where the father and mother both suffered upon presumption for a supposed murder.* And with what shame and remorse did that hasty judge see himself convicted by the person's returning from beyond sea? And every one almost remembers the charge of treason against this reverend prelate's predecessor. If such a Bill had been thought on, or much stronger evidence had been received, it might have passed before the truth could have appeared: but happy was it for that innocent prelate, that a quite contrary method was taken, and his accusers brought face to face to him, by which he quickly discovered the villainy of those miscreants. Private opinion or persuasion, therefore, is such a position that every honest man ought to disclaim in these cases; and the greater the crime is in which he is to judge,

* See vol. 14, p. 1312. See, too, concerning circumstantial evidence, the cases of Green, vol. 14, p. 1199, and of Stewart, A. D. 1752.

the stronger proof he ought to require: and when one adheres strictly to justice, and goes according to the 'allegata et probata,' by the best rules and reasons of law; whatever mistakes, misinformations or false evidence may happen in the case, he can never have cause to repent; and neither the present age nor posterity can blame him.

It was formerly a question, whether the Star-chamber was bound by the rules and resolutions of other courts? And the many excesses, and extravagant opinions in this respect was the reason that ancient court was laid aside. And it has been as great a question, whether the Court of Chancery was to be guided by rules and precedents? But the better opinion has always been, that a judge in equity ought to regard the rules and resolutions that have been in like cases; unless he is resolved to make decrees totally arbitrary.

For though equity and reason, in itself, is the same all the world over, and nothing can alter the proper and intrinsic notions of it; yet, as the matters about which it is conversant are represented in different circumstances, and, like streams of water, will receive some little tincture from the soil through which it runs, and there is something in every man's temper that will slide into his best formed notions; it shews the necessity of some fixed and established rules, at all times, and in all places of judicature. And therefore, in that high court of equity, though the rigour of the common law is in some respects softened, yet there is nothing more known, than that it is not to be impeached in any of its essential and fundamental points.

I hope your lordships will pardon me, if I mention an authority or two of great name, that expressly say, the High Court of Parliament is likewise bound by the rules of law. Lord chief justice Holt says, the authority of parliament is from the law;* as it is circumscribed by law, so it may be exceeded; and if they do exceed their legal bounds and authority, their acts are wrongful, and cannot be justified any more than the acts of private men. I might add to this, the opinions of Vaughan, Hale, and Hobart, to the same purpose; that the rules of law ought to guide in passing of acts of parliament, as well as in the ordinary course of judicature. But when I mention the sense of a living authority, that has filled the highest stations in the law, and so great an ornament to your lordships' house, and whose merits have been so lately distinguished by new honours, I need cite no more. It was in a case, where the same doctrine was advanced (that the parliament was not bound to conform to the rules and proceedings of other courts): in answer to which, that noble lord with great truth observed, that those rules were not to be patterns to them, only because they were rules of those courts, but because they were reason, and reason approved of by long experience, and they obtain there as rules for that cause; and I hope (says he) that is a cause why the House should imitate them, as much as Westminster-hall; or else how can they be said to go according to reason or justice, when they go beside, or transgress those rules?

Besides these great authorities, there have been times, when parliaments have thought themselves bound by the common rules and proceedings of law, and parliaments that were very tender and sensible of their own power in other respects. Not to mention several ancient acts of reversal, because judgments given in parliament were not pronounced according to the known laws; there is the act for the attainder of the earl of March, because he hath been instrumental in procuring the attainder of another lord, under pretence of a letter, which (the record expressly says) was no evidence. And the record for reversing the attainder of Roger Mortimer, 28 E. 3, sir Thomas Haxley, &c. is expressly declared to be, because they were attainted contrary to the good laws and customs of the realm. And not only the lawyers and the histories of those times condemn them as grossly contrary to law and justice; but the stat. 1 E. 6, cap. 12, is directly levelled at them. For it recites that those proceedings were terrible and extreme, introduced for particular policies and purposes; repeals several statutes that had been enacted in the preceding reigns; and that there might be no more such for the future, reduces all treasons to the ancient standard of the 25 E. 3, and goes on and enacts, that no person or persons (*i. e.* my lords, as I humbly apprehend, no manner of persons, in no manner of place, court, or method) shall be convicted for any offence of treasons, petit treasons, misprisions, for which the offender shall in any wise suffer any pains of death, imprisonment, loss of goods, or the like, unless accused by the testimony of two lawful and sufficient witnesses. The stat. 5 E. 6, cap. 11, goes further, and says, there shall not only be two witnesses, but those two witnesses shall be produced in person before the party, and shall before his face maintain and avow what they have to say. The words of this statute, as well as the former, are as general as they can be, without any exception of place or proceeding.

But notwithstanding these two statutes, there was still occasion for the stat. 7 W. 3, to ascertain treasons, and to regulate the method of trials. For there had been several tender, complaisant laws introduced by the pretended zeal of ministers, with a peculiar eye to the prince on the throne; which though others could not apprehend the justice or necessity of, yet on these laws there had been many unreasonable penalties, undue and irregular prosecutions in the preceding reigns, and which sir Jo. Hawles remarks as one of the great and immediate causes of the Revolution. And to shew the resentment of the nation on these proceedings, they were all reversed by particular acts of parliament; and to prevent the same for the

* Salk. Rep. 505.

future, that glorious statute was made of the 7 W. 3, cap. 3, that persons accused as offenders should be justly and equally tried, and not debarred of all just and equal means for the defence of their innocency. And whoever casts his eye over the preceding trials, will find every clause of that statute, as it were, a particular provision against the mischiefs that had been, and to prevent the like for the time to come.

I do admit, my lords, there is a proviso in the end of that statute, that it shall not extend to any impeachments or proceedings in parliament, and therefore I don't mention it as a rule to parliamentary proceedings in all respects, as it is to inferior courts: but surely the reason and justice of that act ought to be a guide, as far as it is consistent with the nature of your lordships' proceedings. And inasmuch as it was the sense of the whole legislature, and the united voice of the nation at that time, and on a dear-bought experience, it is surely so far worthy of your lordships' imitation. It can never be consistent with public wisdom, to run again into the same mischief from which we are so happily rescued, or to split on the very same rocks, on which many of your lordships' noble ancestors have perished.

And it can never be (with submission to your lordships' better judgments) a natural or a reasonable construction of that proviso to enlarge the proceedings of parliament, or to give a greater latitude than ever they had before. And to remind your lordships how the usage of parliament was, preceding this statute, I need mention but two or three instances out of many. Lord Delamere's case in king James's time,* 1686, where there was one positive witness and a strong circumstantial evidence; and yet your lordships' predecessors thought that not sufficient to find him guilty. The lord Stamford's case in the very same year, where there was also one witness, and strong circumstances; and he was in the like manner acquitted.† In the case of the earl of Pembroke, 1677, for blasphemy and abuse of the Sacrament, your lordships' predecessors declared, that the single testimony of a commoner, though on oath, was no sufficient evidence against a peer denying the fact upon his honour; and upon that addressed his majesty that he might be released from his imprisonment.‡

And, as I humbly apprehend, your lordships have thought fit to admit some of the regulations of that act into your proceedings, such of them (as I before said) as are agreeable and consistent with the nature of your proceedings. Your lordships have been pleased to allow counsel to a prisoner in treason to speak to matters of fact as well as law: you allow a copy of the charge against him; you require the witness for him to be upon oath, as well as against him; neither will your lordships admit evidence of a fact not in the charge. And surely, my lords, there is as much reason, and as much equity to require (as that statute requires in the courts below) the testimony of two lawful and sufficient witnesses. Nay, my lords, I hope the reason is much stronger, because (although your lordships should consider yourselves as unrestrained by the stat. 7 Will.) yet it is positively required by both the statutes of Ed. 6, which are general and without exception, (as I before observed) and because it is agreeable to the usage of parliament (as I have likewise shewn) from that time even down to the stat. 7 Will. And if your lordships are not enlarged by the statute of king William, and the statutes of Edward 6 are still laws, give me leave, my lords, to say, it can never be just or lawful to take away any man's life or liberty on less evidence than what those statutes require, in any place, or by any method whatsoever. Because I am taught by casuists, that every just law is a rule of conscience, whether divine or human; and no man can say his conscience is void of offence towards God or man, unless he acts according to the laws of the one sort, as well as of the other.

And if your lordships will give me leave to step once more out of the verge of my own profession, I will mention a word out of the civil law conformable to this: that is a law, my lords, in some degree received by all nations, as a scheme of the greatest equity and justice. The number of witnesses by that law, ought to be two at least, to make a full proof, and free from all exceptions, both as to their persons and to their deposition. The testimony of a single witness is of no validity, unless where other circumstances concur; and it was not the manner of the Romans to condemn any man, before that he, which is accused, have his accusers face to face. And this, my lords, is not only the dead letter of the Code and the Dig. but the learned Groenw. in his notes upon these laws, says, It is the general policy, and obtains at this day in most parts of the world. I do own that there are many cases that happen with us in the courts below, where the testimony of two witnesses is not required; but then, my lords, it is when the trial is by jury, that is, when twelve men, coming from the party's own neighbourhood, and consequently must be supposed to know something of the fact, upon their own knowledge find a verdict upon their oaths. But I need not say, that even in a trial by jury, if it is a case of high-treason, like this now before your lordships, there must be two witnesses, and nothing less can warrant the verdict. And surely, my lords, it is a practice founded on reason; not because this or that law, or this or that court requires it, but because it is absolutely necessary for the discovery of truth, and for the forming of a right judgment, whether what

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* See his Case, vol. 11, p. 509.

† From inspection of the Lords' Journals in the reign of James the second, I am inclined to believe that no trial of lord Stamford was had.

‡ See vol. 6, pp. 1309, *et seq.*

is swore be true or false. One witness may mistake, or be perjured, and yet happen to be consistent with himself; but when there are two separately examined, the truth is much more easily found out. And though a criminal may now and then escape for want of such a proof, yet that would be a far less evil, than to trust so much, in cases so penal, to circumstances and presumption, and to the malice and mistakes of one person.

But if, notwithstanding the opinion of the greatest lawyers both English and foreign, your own uniform usage and resolution, and the reason of the thing itself, your lordships are resolved, in this one instance, to follow every one his own private and particular conscience; let every one hearken to that still voice within him, with an honest attention, unto those secret whisperings, with temper and moderation. Let no man be swayed by hopes, over-ruled by fears, or transported by zeal beyond the bounds of justice, and through this reverend prelate's side give a wound to himself or posterity, which may never be cured. Consider, my lords, if not for his, yet for your own sakes, the circumstances, the probabilities, and evidence on both sides, with an unbiassed conscience, and by the measures of law and justice. For though some proceedings may seem convenient to certain times and occasions, yet unless they agree with the law, with reason, and with justice, no man ought to think he has any power to consent.

There is a noble instance on record of the lord Digby, and worthy of every one's imitation. He had been, my lords, one of the most violent managers in the impeachment of the lord Strafford;* and yet when that proceeding was waved, and a Bill of Attainder brought in, he spoke as violently against it: though he was still of opinion (he said) that that lord was the same dangerous minister, and great apostate to the commonwealth, who must not expect to be pardoned in this world till he was dispatched to another; yet he had rather lose his hand than put it to that dispatch. He put them in mind of the difference between prosecutors and judges, and how unbecoming that fervor was in them, now they were judges, which perhaps might be commendable in them as prosecutors: that when he gave his consent to the accusation, he was assured, his crimes would have been fully and legally proved, which if they had, he could have condemned him with innocency, as he had prosecuted him with earnestness; but as the case then appeared, no man could satisfy his conscience in the doing of it. The parliament, it is true, had a judicial and a legislative capacity; the measure of the one ought to be legally just, the other political and prudential: but these two capacities were not to be confounded in judgment; they were not to piece up (says he) the want of legality by matters of convenience, to the ruin of a man, by a law made 'ex poste-'riori.'

What can I say more? For it must appear to your lordships by this time, that this proceeding is contrary to the fundamental laws of the kingdom, contrary to public wisdom, and unjust in itself: that the reasons and suggestions upon which it is grounded have not been proved with any colour of legal evidence, or with any degree of proof or probability which ought to satisfy the conscience of an honest, reasonable man. But if the matters, which I have humbly laid before your lordships, have not all the weight, which I hope they have; or if I have omitted any thing that is material or necessary for this reverend prelate's defence, your lordships, I hope, as judges, (and consequently in some measure of counsel for the prisoner) will, from your own observation, supply it. Or if I have laid them before your lordships in an improper light, or a less effectual manner than others might have done; yet the case itself will speak better and more strongly than any words or expressions of mine can do. It is the cause, the fortune, and the liberty of a most reverend and learned prelate, who is to be stripped and torn from those dignities and preferments which his own high merits justly called him to, and which he has ever since adorned with the greatest lustre; upon what slender and insufficient grounds, your lordships have already heard, and I was going to say, without precedent: but I must own there have been instances of deprivation, some in the beginning of queen Elizabeth's reign, and some others since the Revolution. But yet they were upon a general law, then in being, and an incapacity voluntarily incurred by those prelates, after the full knowledge and publication of those laws, by refusing to give that security to the government, which at those times was absolutely necessary. And though they were peremptory in the last degree, and their example might have produced worse consequences than it did; yet their punishment went no further. But this is a particular law, to be introduced for this particular prelate, subsequent to the supposed offence, and which is not thought fit to be enacted as a law for any other person hereafter; and I wish, my lords, I could say, this act went no further. But this reverend prelate is likewise to be deprived, not of his life, indeed, but of all the conveniences and comforts of it, of the commerce of his friends and relations, and of all that is valuable to an Englishman. He is to be doomed to the curse of Cain, and to be turned out of his native country, full of age and infirmities, to the cruelty of strangers and foreigners, and even beyond the reach of his majesty's most extensive goodness.

But if your lordships should pass this Bill, he will still have, I doubt not, the peace of his own mind, and this comfortable reflection, which no man can take from him; that he shares the fate of the greatest and most honest

* See the Case of lord Strafford, in vol. 3, p. 1381, of this Collection.

statesman of the last century: though in this instance also it is his lordship's misfortune to be very much distinguished. For he, though innocent, was afraid of the violence of the times, and withdrew from prosecution. But this reverend prelate has been all along forthcoming, and, as it were, fearful of nothing; and, conscious of nothing but his own innocence, has sought in all places to be brought to trial. That noble lord's crimes (or at least his accusation) were going to be proved in a proper parliamentary manner by numbers of persons: But this reverend prelate is to be involved by implications, inferences, constructions, and the conjectures of decypherers, in crimes which he is here ready to deny, and of which no man accuses him.

I would not be understood, my lords, by any thing I have offered in relation to the particular penalties, as if I thought any one suggestion of the Bill had been duly proved, so as to deserve this or that part of the penalties; though I must say, they are all so extraordinary in their nature, as to deserve your lordships' attention. And I doubt not but your lordships, in your goodness, will consider what is already passed, the length and closeness of the imprisonment which this reverend prelate has already suffered as a supposed criminal. Prisons before conviction are only for the safe custody of a man, and not for punishment; but his imprisonment has not been so: which (if my instructions are true) has been attended with such unheard-of barbarities, and such distinguishing severities as are a shame and reproach to every civilized nation. The Case of Colledge* every one has thought hard and barbarous; but it is this reverend prelate's misfortune to be distinguished in this also, as well as in every thing else: For that Case was before the law allowed counsel or solicitors to assist a prisoner in his defence, but now they are allowed by law, and were actually and duly assigned to my lord bishop; and yet part of his defence, and part of his evidence torn and taken from him. So that, all these things considered, his lordship cannot escape without being a very great sufferer, though your lordships should utterly reject this Bill.

Your lordships will also consider the infirmities of body under which that great and noble mind even now labours before you; which have rendered him almost uncapable of attending his defence. Your lordships will also consider the grief and vexation it must be to appear as a criminal before this honourable House, where he has so long sat as a judge, and under the suspicion of those crimes which are laid to his charge; and how grievous it is for one of his lordship's character and function, to be taxed with breaches of his duty to God and man, of scandal to religion, of designs of overthrowing church and state, in favour of Popery; who happens to be the only clergyman in England, that ever thought it worth his while to draw his pen in defence of Martin Luther, the great instrument of our reformation from Popery? and who has upon all other occasions, appeared the most strenuous asserter of it. I might add much more of his lordship's personal merits, and of those high abilities so eminently conspicuous in him; but that I know it is some kind of violence to his lordship to hear even thus much mentioned.

Yet suffer me to say, that if these suggestions should be carried into a law, without any degree of evidence or probability, but rather (as your lordships will immediately hear) against the strongest evidence and probabilities that are possible of the contrary: I say, if this Bill should pass on such circumstances, whatever the present age may think, his case will be a standing mark of reproach to it, and he will be the wonder and the pity of all succeeding generations.

I shall add to your lordships' trouble but one word more in behalf of myself: That your lordships will pardon any warmth of temper, any unguarded word or expression that I may have been guilty of in the course of this long defence, in a case, which every Englishman naturally considers as his own, and therefore will, in some measure, warm the most even temper. And that this learned (and whom I will now call innocent) prelate, will accept those little services I have been able to perform, and will pardon the many failings, which I may already have been guilty of, in his necessary and most just defence.

Then the Bishop's counsel proceeded with their evidence.

Among which, on May 10th, Erasmus Lewis esq. declaring, "That he was employed in the secretary's office; and knew one Brocket, who was there likewise employed:"

And being asked, "What he knew concerning the skill of the said Brocket, in counterfeiting hands?"

The House took into consideration, "Whether the said question was proper to be answered by a person who has been employed in the secretary's office." And after debate,

It was resolved, that this House does not think it proper to suffer Erasmus Lewis, esq. to be examined touching any transaction any way relating to the government, which came to his knowledge by reason of his being employed in the secretary's office.

Mr. Johnson and Mr. Atkins being severally examined, touching the counterfeiting of seals,

And the former, being shewed the seals on both letters found in the Bishop's custody, was enquired of, "Whether the impressions were made by the same seal?" and farther, "Whether, if the impression of a seal was taken in wax, and then broken, it were possible afterwards to take, from that impression, an entire impression, which should exactly resemble that impression before it was broke?"

* Vol. 8, p. 549.

The counsel for the Bishop then called Mr. Rollis, who was formerly produced by the counsel for the Bill.

And several impressions of a seal or seals were put into his hand, to try his skill.

But a doubt arising, as to the method of putting this matter to a proper trial;

A motion was made, "That this House doth not think it just, that the witness produced at the bar should be examined upon any impressions, but such as shall be made, and in such manner as shall be directed by the House."

And a question being stated thereupon:

After debate;

The previous question was put, "Whether that question shall be now put?"—It was resolved in the affirmative.

"Dissentient. —— Scarsdale, Strafford, Brooke, Poulett, Craven, Uxbridge, Salisbury, Litchfield, Anglesey, Bruce, Gower, Cardigan, Aylesford, Montjoy, Compton, Trevor, Foley, Pomfret, Hay, Ashburnham, Cowper, Bathurst, Denbigh, Willoughby de Broke, Fran. Cestriens', Exeter, Northampton, Dartmouth, Bingley."

Then the main question was put, "That this House doth not think it just, that the witness produced at the bar should be examined upon any impressions, but such as shall be made, and in such manner as shall be directed, by the House."—It was resolved in the affirmative.

"Dissentient.——Scarsdale, Strafford, Craven, Cowper, Pomfret, Bathurst, Brooke, Ashburnham, Denbigh, Foley, Fran. Cestriens', Compton, Trevor, Willoughby de Broke, Exeter, Montjoy, Dartmouth, Northampton, Aylesford, Gower, Poulett, Bingley, Hay, Uxbridge."

The counsel and Bishop were called in again, and acquainted with the said resolution,

And the counsel against the Bill desiring to know in what manner the House will direct the examination to be made:

It is ordered, That two of the clerks do forthwith withdraw; and that a person, to be appointed by the Bishop, do, in their presence, from one or more seal or seals, such as he shall think fit, take impressions in wax, of one or more sorts, to be provided by the clerks; that the impressions be numbered; and that the clerks write down in paper, from what seal, and in what manner, every impression was taken, and deliver such paper in at the table, sealed up; making oath that the same is true; and that the seal, or seals, from which such impressions shall be made, shall be detained by one of the clerks, till called for by the House; and that the clerks, and the person so to be appointed by the prisoner, be sworn to secrecy, and not to disclose to any person whatsoever any thing which shall pass in that transaction, till after the paper so delivered in shall be opened.

And the Bishop being directed to appoint a person to take the said impressions; he named Mr. —— Gardiner, who, with Mr. John Wheake and Mr. Charles Reynell, two of the clerks of this House, were sworn to secrecy, as directed: and withdrew accordingly.

And being returned, delivered in the impressions, and also the papers, sealed up, with the numbers referring to the said impressions enclosed; which according to the order of the House, were taken.

And Mr. Rollis was called in; and the said impressions were put into his hands, to make the best judgment thereupon he could.

Then Samuel Stean, Susan Harvey, Sarah Jones, and Thomas Franden, servants to the bishop of Rochester, were severally sworn, and examined, touching the times when the Bishop was in town, or in the country; or of his lady's sickness and death; and his illness of the gout; and what persons had visited or resorted to his lordship the last summer, before he was taken into custody.

And the counsel for the Bishop offering to read the deposition of John Lawson, out of the Appendix to the printed Report of the committee of Commons:

And the same being objected to by the counsel for the Bill as foreign to the matter laid before the House:

But being insisted on by the Bishop and his counsel; after debate, it was agreed, that the Counsel and Bishop be called in again; and acquainted, "That they were not to read the said deposition."

And the counsel and Bishop were called in again, and acquainted therewith.

The Bishop mentioned certain avocations which took up his time; and offered to bring proof thereof, if the House should think it proper.

But the same not being thought material; his lordship called Mr. Pope, to give an account how he employed his time; and where he used constantly to find his lordship when he visited him; and in regard of the great intimacy there was between them, "Whether he suspected the Bishop was engaged in such matters as were laid to his charge?"

And he was examined upon oath.*

Then Mr. Rollis the engraver was called in;

* "In 1723, while Pope was engaged in this new version (the Odyssey,) he appeared before the Lords at the memorable trial of Bishop Atterbury, with whom he had lived in great familiarity, and frequent correspondence. Atterbury had honestly recommended to him the study of the Popish controversy, in hope of his conversion; to which Pope answered in a manner that cannot much recommend his principles, or his judgment. In questions and projects of learning, they agreed better. He was called at the trial to give an account of Atterbury's domestic life, and private employment, that it might appear how little time he had left for plots. Pope had but few words

and acquainted the House, "That he had viewed the impressions of seals before delivered to him in the House, and conceived they were taken from two cast seals from one original."

And the papers, delivered in sealed up, being opened and read; it appeared that he had formed a right judgment thereon.

On May the 11th, the evidence for the Bishop being concluded,

Sir *Constantine Phipps* made a short recapitulation of the evidence, as follows:

My lords; we have done with our evidence; and hope we have fully answered every part of the charge contained in the Bill, and apprehend there is no one circumstance left unanswered. Particularly, that we have totally destroyed the credit of Neynoe's hearsay evidence: For when the improbabilities, inconsistencies, and contradictions of his examinations are considered, and the testimony of the witnesses is duly weighed; no person can give the least credit to what he hath said, without offering the greatest violence to his reason.

And it is wonderful, that the counsel for the Bill should insist he should be credited in any thing: When we have proved, he had the confidence to declare, that a right honourable person had endeavoured to persuade him to accuse persons of quality of things he knew nothing of.

Hath he not said that, when he was to be examined, that right honourable person had him first in private, and told him, what questions would be asked him, and what answers he should give? Did he not say, that the very same gentleman gave him five questions or enquiries, and told him what he should reply to each of them? Hath he not said, that refusing to give evidence, he was threatened with Newgate; and that thereupon he gave them informations against my Lord Bishop and others; Nay, had he not the impudence to say, that the same right honourable person offered him 2,000*l.* 500*l.* per annum, and a place, to accuse the protesting lords, the earl of Orrery, and this reverend prelate? And that being asked, whether he knew any thing of the plot; He swore No, nor any body else; but that he knew of two other plots, viz. One of Mr. Walpole against the protesting lords, the other of himself upon Mr. Walpole, to get 2,000*l.* of him. Nay, it is proved he declared that the same gentleman pressed him so hard to accuse some persons, that he had it once in his mind to take up that right honourable person's sword, and run him through with it; and so make an end of the plot.

These are things which have been proved upon Neynoe: And all these things being considered, I believe the counsel for the Bill will readily agree with me, that no credit ought to be given to one word he has said: And if his evidence be laid aside, the greatest part of the charge against my Lord Bishop falls to the ground.

My lords, the evidence Mr. Lewis gave was very material. For he shewed your lordships, that Brockett, who was of the post office, was so skilful in counterfeiting hands and seals, that he wrote the superscription of a letter, and took the impression of a seal, and sealed it again; and did it so well, and gave it such a lustre, that Mr. Lewis could not distinguish it from the original.

The engravers likewise said, they could take off the impressions of seals so well, that they could not be distinguished: Nay, though the wax were broken, yet if no part of the wax were lost, it might be done.

Your lordships observe how the engravers themselves were mistaken in relation to some impressions, which were produced to them; And you farther observe, that the seal in question was a Cicero's head, which all the engravers agree to be a very common one; and they had many of them: So that no objection can be made against my lord on account of that seal. Nay, one of the engravers said, it appeared to him that the seals of the two letters were not the same. As to the dog, there is Mr. Crawford's certificate, and Birmingham's affidavit.

As to Mrs. Barnes's evidence, she hath found out now, that there were two dogs, though nobody else ever heard of two. She said, the first was for the bishop of Rochester. Now it is plain, the first was sent in March; and it was his leg that was broken: And Birmingham swears, and Mr. Kelly solemnly affirms, that it was for Mrs. Barnes, and not for the Bishop.

As to the three letters of the 20th of April, we have proved it impossible that the Bishop should write, or dictate those letters to Mr. Kelly. And your lordships take notice, how the butler came to observe these letters could not be written by the Bishop; and the servants, though under confinement, and not permitted to see any body, agree in their evidence. There is Gordon's affidavit that he never had such a pacquet: And James Talbot was here in town the 29th of April.

Thus, your lordships observe that a Bill of the most extraordinary nature that ever was seen, hath been supported by the most extraordinary evidence that ever was heard: And we hope, we have set the dark passages, of which the charge is compounded, in such a light, that every one may plainly see the right reverend prelate is not guilty of any one offence charged against him.

Mr. *Wynne* spoke next. My lords; I shall

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to utter, and in those few he made several blunders.

"His letters to Atterbury express the utmost esteem, tenderness, and gratitude; perhaps, says he, "it is not only in this world that I may have cause to remember the bishop of Rochester." At their last interview in the Tower, Atterbury presented him with a Bible."—Johnson's Life of Pope. See, too, New Parl. Hist. vol. 8, p. 267, *et seq.*

beg your patience to close our defence with an observation or two on the evidence that has been given by my Lord Bishop: and I need take up the less of your lordships' time, because our witnesses have fully answered all I opened, and in many things have exceeded my instructions.

And for your lordships' clearer apprehension of so many various and perplexed facts, I shall just recapitulate what I humbly conceive to have been the substance of the charge against my Lord Bishop, and, as briefly as I can, state the evidence, which we have produced in order to falsify and disprove it.

The first and chief accusation against his lordship was founded on the informations of Philip Neynoe, and therefore the first part of our proof was as to his credit. Your lordships, I doubt not, remember the purport of his information read against us, and the many gross absurdities and inconsistencies in his other information read by us; and likewise how fully they have been all disproved, and the credit of them entirely blasted, even from Neynoe's own confession, several times repeated, and confirmed by three unexceptionable witnesses.

Your lordships have fully heard of the terrors and apprehensions he was continually under; because (as he himself expressed it) he had given false informations against this reverend prelate, and so many other innocent persons. Your lordships have heard the inducements he had to give those informations, and how often he had declared his intentions to escape, in order to avoid the punishment which he apprehended most justly due to him, because he could not make out the truth of them.

Two of those witnesses (Bingley and Skeen) are still in custody, and destitute almost of all the necessaries of life: I say, my lords, they are still in close and strict custody, and consequently there could have been no opportunity to lead or instruct them in what they should say, or so much as to be apprised before-hand (which surely would have been a reasonable liberty) whether they could say any thing material or not; and we are only beholden to those lights, which the Report of that honourable committee has afforded us: And all three of these witnesses utterly unknown to my Lord Bishop both in person and reputation, as well as his lordship is unknown to them. They have not conversed together for several months, but yet are perfectly consistent with themselves, and entirely supported and confirmed by each other. And all three declare, they had very early told, and frequently repeated this account of Neynoe to their fellow prisoners and acquaintance, as long as they were permitted to have access to them. Mr. Skeen being asked in relation to the discourse between him and captain Pancier, as in the printed deposition of Pancier, App. D. 1, has denied on his oath every word of it. He says, indeed, that captain Pancier used all his endeavours by treats and entertainments to induce him to support this information; but that he never gave him, nor could give him grounds to say any such thing of him.

We have shewn your lordships, that Mr. Stewart in particular was so far from patching up, or contriving evidence (as was objected to him by the counsel for the Bill) after he had seen the Report and Appendix, that he had given this whole account to several persons long before. For he says, the things which Neynoe told him were so surprizing, that he could not stifle them in his own breast. Though your lordships, I doubt not, observed with what difficulty and modesty he was brought to speak out in this public manner, where his evidence seemed to reflect on a great and honourable person.

Two of these persons have likewise been produced to your lordships. To one of whom (Mr. Gordon) he told these matters some days even before Neynoe's death; and to Mr. Kynaston some considerable time before the meeting of the parliament: and we could have called others to the same purpose, but that we were unwilling to give your lordships further trouble in a matter which already had, as we thought, the fullest, the most satisfactory, and consistent evidence that could be.

The second head of accusation against this reverend prelate, was upon account of the three letters of the 20th of April. The two first we before observed to your lordships not to be criminal, if really designed for, and addressed to the persons supposed. The third we have likewise shewn by various circumstances and reasonings, could not possibly be addressed to the Pretender, whoever wrote it, or whomsoever else it might be wrote to.

And the evidence offered to prove them to have been dictated or wrote by my Lord Bishop, was first by the subscription of the common name of Jones, which they would have to denote his lordship. As to this, I doubt not, your lordships remember, that even in the cyphers and letters that have been read, the name of Jones is manifestly applied (as the committee themselves have observed) to many different persons; sometimes to one, and sometimes to another, as the circumstances there mentioned seemed to give occasion; but cannot once in any place, with reason or justice, be applied to my Lord Bishop.

The next proof that has been offered to your lordships, to prove these letters to have been dictated or wrote by the Bishop's privity, is, from the ill state of health, the death of his lady, and the present of a dog; circumstances which, they say, are applicable to the Bishop, and to him only.

That his lordship did not, nor could possibly write or dictate these three letters, we have laid before your lordships such a proof, as the like hardly ever was before: and it is impossible, in my humble apprehension, for a negative to be more fully proved in any case. Your lordships have heard the great weakness and inability of this reverend prelate at that very time for all manner of business and conversa-

tion. No less than six, if not seven of his servants, have spoken fully and positively to it, that his lordship was not able, without their help, to stir, turn in his bed, or even to perform the common and ordinary offices of life. One would think, my lords, such melancholy circumstances, in themselves, sufficient to guard any man from suspicion.

But the witnesses have gone much farther; for they have told your lordships, that no stranger approached the Bishop's room all that time; nor had any one been, for a considerable time before and after the 20th of April, under his roof. Even some of those persons that usually were with my Lord Bishop at other times (as his son, his chaplain, and his son's tutor) happened then all to be absent at the election of Westminster school.

One of those servants, who happens to be a prisoner with his lordship in the Tower, being asked, whether my Lord Bishop had not put him in mind of these circumstances? told your lordships, that it was entirely his own recollection, by casually taking up the Report, after my Lord Bishop was gone to bed, and dipping on that part of it, in which his lordship is charged with having writ these three letters. Upon which, the next day (he said), talking to his fellow-servant, and he agreeing to the very same circumstances, they acquainted the Bishop with what they had read, and how they could, from their own knowledge and remembrance, falsify and disprove that circumstance.

I must likewise crave leave to observe to your lordships, that four or five of these servants, that have spoke to these particular facts and times, are still in custody, under separate messengers, without any opportunity to converse together, and were hardly to be found by my Lord Bishop, when he had need of their evidence; and yet every one of them have been perfectly consistent with themselves, and one with the other, and all equally positive.

The Bishop's coachman, your lordships, I doubt not, remember, though now under another influence, and called as witness against his master, confirmed what they said, and was as positive and peremptory in his testimony concerning this matter, as far as the nature of his employment gave him an opportunity to make such observations. And upon the whole, I may now, with more reason, and with greater confidence, repeat my former assertion, that it is impossible for them even to devise or frame any scheme, to prove his lordship to have wrote or dictated these three letters, but what will be actually disproved and falsified by some part of the evidence.

Another reason, by which it is proved that his lordship wrote these three letters, was, from the subscription of the number 1378, to the letter addressed to Jackson. Which number Mr. Willes (a decypherer) says, denotes the proper name or title of a person beginning with the letter R. The little time we have had to enquire into this assertion, and your lordships not permitting some questions put by us to the decypherer to be answered, will not enable us flatly to disprove it. But, with submission to your lordships, it seems impossible to affirm even thus much with any degree of certainty, and it must be (as I before observed to your lordships) matter of conjecture only; and it appears manifestly to your lordships, by several passages occurring up and down in this correspondence, not yet decyphered, that either the art is not so infallible, or that Mr. Willes is not so great an artist as he pretends to be.

But, my lords, admitting such a number in this cypher does really denote a person's name, or title, beginning with the letter R, what a strange and uncertain proof is that, to fix a charge of high treason on the Bishop, when there are other persons' names and titles found like his, and many others which begin with the very same letter; and this not to be admitted as evidence in a minute or inconsiderable circumstance, but in the very gist of the supposed offence, in the principal foundation of the charge, in the only letter that is criminal; and, which is to magnify and improve the rest, into high treason?

Another way of proving these letters to have been dictated by the Bishop was, because another, supposed to be an answer to this, mentions the present of a dog. I need not here repeat what Mr. Kelly himself has constantly said in his examination, because your lordships, I doubt not, remember what Mrs. Barnes said; that Mr. Kelly indeed sometimes told her of another dog that was for the Bishop, but that she always apprehended that dog, which she had in her possession, was designed for her, and never heard of any other dog that did come from France: she owns, that she never received any one message from the Bishop about it, but still kept it, when it was recovered, as her own, as long as it lived; and though his lordship never had, nor loved a dog in his life, yet it would have been natural, and good manners to the person that sent it, especially if so considerable a person as is supposed, to have made now and then some little enquiry about it, if my Lord Bishop had really known any thing of the dog.

But we have shewn your lordships by the solemn attestation of Mr. Birmingham, the French surgeon, that he was the person who gave this dog (in March 22,) to Mr. Kelly for madam Barnes, of whom he had received civilities in London, and for no other person, nor with any other intent. He likewise says, that he never received any such thing as a dog, or message from lord Marr, (as alleged in the Report) never had any the least thought of the bishop of Rochester, or his lady, much less of making either the one or the other (to both of which he was utterly unknown) any such present.

Your lordships observe this to have been a solemn notarial act upon oath, of a person not only reputed, but attested likewise by the lord of the seigneury, to have been a legal notary,

and to have exercised his office as such for some time. That the testimony of such a person beyond sea is a good and unexceptionable proof in every case, I need not say; or that it has been often allowed here, where no other is to be had, nor any other* method to have the benefit of a man's testimony that is beyond sea. And our witness has told your lordships that he has frequently translated such instruments: that he believes it to be the notary's hand-writing, and the public seal of his office. I need not, my lords have said thus much; for in all events it must surely have been of more weight in your lordships' judgments, than the extract of an information given by a person infamous in his character, absurd and inconsistent in all he said, and without being signed or sworn to, even by that person.

But yet this affidavit of Mr. Birmingham has the more credit, because his majesty's own resident at Paris (Mr. Crawford) has been pleased to examine him about this matter, (being employed by him in his profession as a surgeon), and he has confirmed the same account to him, which has been likewise transmitted, and read to your lordships.

Another way of proving my Lord Bishop to have been concerned in these letters, was from the hand-writing, which is supposed to have been Kelly's, and he is supposed to have been his lordship's secretary in these matters. But both these allegations we think, with submission to your lordships, are still utterly destitute of any proper or satisfactory proof.

I before observed to your lordships, that the first time the clerks of the post-office have made any deposition about the similitude of the hand-writing, was four and eight months after they had seen the original letters; which is a little of the latest so exactly to remember all the little strokes and turnings of a pen, by which the identity or diversity of a hand can only be made out. That Malone, the footman of Mrs. Barnes, was never called upon for his testimony till January last, that is, nine months after he had seen any of Kelly's writing, and consequently not then very able (if ever he was) to form a judgment of it.

I have already observed to your lordships, that this was the first, and the only instance, that any evidence of the similitude of hands was ever admitted, but where the papers pretended to be in the same hand were produced and compared in court; which is so far from being the present case, that the clerks of the post-office never had any opportunity of comparing the original of the 20th of August, with any one of the three originals of the 20th of April, or with any one of the intermediate letters which they affirm to have been in the same hand: so that they are made the absolute and ultimate judges of this matter, without any possibility, on our side, of detecting any casual or wilful mistake.

And I would not again repeat an observation I have before made to your lordships, that a great part of these letters are in figures; and how much more difficult it is to distinguish the hand of one writing in figures, from words and syllables in length; because we have shewn your lordships, by three positive witnesses (well acquainted with Mr. Kelly's writing, one of them above 20 years, and his schoolfellow), that the only original letter of the 20th of August, stopped at the post-office, as a sample to the rest, and which is the only foundation upon which those clerks have affirmed these three letters to have been Kelly's writing) really and in fact was not his, nor like it. This, my lords, we have fully proved by three witnesses; and as a demonstration of what they said, they shewed your lordships, among a variety of papers produced to them at your bar, that they could at once distinguish which was Kelly's hand, which was any thing like it, and which was not.

We have likewise produced to your lordships, the solemn attestation, on oath, of Alexander Gordon, junior, the son, banker at Boulogne, that no such packet of letters ever came to his hands, as mentioned by the counsel for the Bill; and consequently he could not deliver any such to Talbot, (who, they say, called for them at Boulogne). He farther deposes, that he never had any business or intercourse with Kelly or Johnson, nor ever had acquaintance with any person so called, in his whole life.

And we have proved to your lordships, that James Talbot, the tall black man, described in the letter printed in the Appendix, and who is supposed to have been the person that called upon Alexander Gordon at Boulogne for this packet, was so far from doing it at the time supposed, that he was at London that very day, as appears by the unexceptionable testimony of Edward Crofton, his shoemaker, and by the entries of his shop-book, to whom he accidentally paid a bill upon that very day, at his house in London.

We have likewise shewn your lordships by two witnesses, Mrs. Kilborn, and her maid Anne Ellis, that Mr. Kelly was at her house in London on the 20th of April, (the very day upon which my Lord Bishop is supposed to have dictated these letters to him) and by a great variety of evidence, impossible to escape any one's memory, that my Lord Bishop was ill in bed, at Bromley in Kent: and 'quod non 'datur actio in distans,' is an axiom of reason as well as of philosophy.

And I must humbly submit it to your lordships, that it has not yet, in the least, appeared by any shadow of evidence, that Mr. Kelly ever was employed by my Lord Bishop to carry on a correspondence; that he wrote any one letter for the Bishop, upon that, or upon any other occasion whatsoever.

That passage in the letter to Weston, that seems to give countenance to such a supposition, the learned counsel for the Bill told us yesterday they had waved, and were angry

* 2 Rolls Rep. 346. Law of Evid. 3.

that we should offer to disprove that which they had not proved. But, with submission to your lordships, though they have been pleased to wave that part of the charge against my Lord Bishop, yet, as it makes no small or inconsiderable appearance in the Report of that honourable House, and will be so handed down to posterity, we thought it proper to give an answer to it; and, we hope, it has been to your lordships' satisfaction, and still in your memory.

The next thing was the letter to Dubois; and I confess myself at some loss to know for what purpose that was read in evidence to your lordships; for the counsel for the Bill have not, as yet, made any particular and direct use or application of that piece of evidence, and therefore I shall submit it to your lordships upon the observations I before made on it.

There was indeed, some of your lordships' time spent in comparing the seal of that letter, with that which happened to be taken on my Lord Bishop's servant at the Tower: if it was intended as any proof, I cannot at present judge; however, we thought it proper to follow them in the course and manner of their proof, and your lordships yesterday have fully heard the danger and uncertainty of admitting such a proof. First you have had some account from Mr. Erasmus Lewis of the known practice of one Brockett, who was able to counterfeit any man's hand or seal, in such a manner, that even the person (whose hand or seal it was) should not be able to distinguish it from his own.*

Then we produced to your lordships two seal-gravers, who fully attested the same thing. Mr. Atkins said, that he himself could make such an impression, so as not to be distinguished by an artist, and give it the very same lustre. That he could even take an impression from a broken seal, and though there would at first necessarily be some little flaw in it, yet he said he could mend it, and then make such an impression from it, that even an artist could not discover it from the original.

Mr. Johnson, another eminent seal-graver, likewise told your lordships, that he could do the same thing: In particular, that he had once such an impression taken in paste by one Mr. Wisembergh, and from that he made another impression, so perfect and exact, that Mr. Wisemberg himself could not distinguish one from the other: But as to the seals of these two letters, he doubted very much whether they were made by the same seal or not; and from some little strokes in the head, that were very visible to any one, though not so easy to be expressed, he rather inclined to believe, that they could not be made from one and the same seal.

And when your lordships were pleased to enquire of them, how such a thing was practicable? They did not cover themselves (as their decypherer did) by saying, it would discover the secrets of their art, but frankly told your lordships the very manner and method of doing it.

Their own seal-graver, Mr. Christian, owned, that this might be done, although he had never done it: And in the experiment made on Mr. Raulus, their other seal graver, he was once plainly in the wrong, as well as once in the right. And it manifestly appears from every one of their testimonies, that this practice of taking impressions is very easy. And as one of my noble lords informed the House his footman could do it as well as any of them; and, as your lordships yesterday observed, even to deceive Mr. Raulus himself, who, they say, is so great an artist. And, therefore, my lords, it is a most dangerous sort of proof, and too uncertain at the best, to receive any judicial countenance in a criminal matter.

So that I must humbly insist, that this part of the charge against my Lord Bishop has not been proved any better than the former; and that when your lordships do consider the evidence that has been given on the one side, as well as on the other, as to this particular charge, we hope you will be of opinion, that there is no just or reasonable ground to presume, that these three letters were wrote by Mr. Kelly, and much less that they were dictated by my Lord Bishop.

The next general charge against this reverend prelate, was the receiving of two letters from abroad, in relation to this conspiracy. The counsel indeed for the Bill have waved the letter signed Digby, addressed to Weston, and (as I apprehended from them last night) did not now pretend to prove any thing concerning the Bishop, under the name of Weston.

Neither have they as yet pretended to prove, that the other letter from Motfield to Illington ever came to his lordship's hands, or in whose handwriting it was wrote; though if it were the lord Marr's (as it is supposed) many of your lordships must have been well acquainted with it. Nor has it been yet said, that my Lord Bishop ever returned any answer to it.

And as we have now proved (and fully too, we apprehend) the letters of the 20th of April, to which this is supposed to have been an answer, to be a mere fiction or imposition upon the Bishop; this which is designed as an answer to it, must likewise fall to the ground as part of the same contrivance.

The next and last general charge arises from the coincidences of times and names in the intercepted correspondence, the more readily to induce your lordships' belief, that my Lord Bishop was really meant by that correspondence.

Some of them I accounted for before, as truths publicly known, but turned by ignorant and malicious correspondents to ill purposes, or else as absolute falsities, and manifest mistakes.

We have shewn your lordships by various

* See what Mr. Wharton said in the Case of Algernon Sidney, vol. 9, p. 876.

that the fictitious names supposed to
ny Lord Bishop cannot be applicable to
h any colour, truth or decency; that
a great doubt to be made, whether
others of those fictitious names were
ntended for the persons supposed to be
by them; and especially, that Jack-
whom the letter of the 20th of April is
ed, we have proved by various argu-
and even from those lights the com-
have afforded us, could not possibly
he Pretender, whosoever else it may
and consequently that that letter (if it
rote by Kelly, and dictated by the Bi-
annot be high treason.

as to the articles of times, and the ac-
of my Lord Bishop's coming and going,
be owned they are sometimes right, but
n wrong.

re is no doubt but the correspondents on
de the water, whoever they were, whe-
it of malice or vanity, or out of any other
ment, apprized themselves as well as
ould of the Bishop's motions to and fro,
r to give the better colour or probability
t they said of him. But yet it has hap-
unluckily to them, as your lordships
eard, that out of six or seven instances
ng in these letters, two only are true;
them may be doubted whether true or
because ambiguously expressed; but
f them are gross mistakes, as appears
y the accounts of their own witnesses.

the mistakes are the more remarkable,
e they all affirm the Bishop to have been
country, when he positively was not;
is it was ten to one, but that the mere
s of a stranger at that time of the year,
en true; and the rather because his
p was really in the country ten days to
it he was in town, all last summer.

re is another thing remains for me yet to
to, and that is the intimacy of my Lord
with Mr. Kelly; which was likewise
in to swell the number of circum-
, and as another weighty argument to
your lordships' belief of the foregoing
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has any thing appeared to your lord-
ke it, even upon their own evidence?
chairman is brought to tell your lord-
hat he carried Mr. Kelly to the deanery
r four times about four years ago, but
shop was not once at home. And a
says, he carried two letters from Kelly
Bishop; one of them about Christmas
twelvemonth, and the other letter some
fore that; but received no answer in
nor message, but only his service to
elly. But there is one extraordinary
stance, which shews him, I confess, to
ry willing evidence, though not so very
and credible; that is, that this porter,
s he must be in the midst of winter, de-
his message to the Bishop in his bed-
er.

Malone, the person that usually attend-
ed Mr. Kelly, and went on his errands, was asked to the same purpose; and one might have expected that he should have given some account of it, and had been often employed on errands to and from the deanery: but I submit it to your lordships' memory whether he did not say, that he never was at the deanery in his life-time, nor did know to this day where it stood.

Mrs. Kilborn, with whom Mr. Kelly had lodged a considerable time, says, she remembers a message once came to Kelly from the Bishop; but positively denies that my Lord Bishop's coach ever came to fetch Mr. Kelly at her house, as that honourable committee have been pleased to affirm in their Report. And I appeal to your lordships' memory, whether Mrs. Barnes, whom the counsel for the Bill think so credible a witness in some other respects, and with whom it must be confessed Kelly frequently lodged, was not equally positive in this matter, and that she did not believe there could be any friendship or intercourse between the Bishop and Mr. Kelly without her knowing of it.

Thus the supposed intimacy and great acquaintance between my Lord Bishop and Mr. Kelly stand upon their own evidence. And I beseech your lordships to consider, what sort or degree of proof all this can possibly amount to. But we have shewn your lordships the direct contrary, by no less than ten witnesses, servants to my Lord Bishop, some or other of which were always with him, whether he was in town or in the country, and every one of them has lived with his lordship above two years; and they say, as it were with one voice, that they don't remember any such person or name as Kelly or Johnson coming to the house; as they must have remembered him, they say, if he had been frequent in his visits or messages; and some of them say, they usually wrote down the names of those that did come: and the coachman in particular, who has lived four years with his lordship, and appears now as evidence against the Bishop, and therefore cannot be supposed partial to him in his testimony, is yet as positive and peremptory, that he never saw Mr. Kelly or Johnson, at his master's house, in all his time. And being carried to the Tower by a messenger, to see if he could recollect his face, then frankly owned he had never seen his face before. And being asked how he could pretend to know all persons that came to the house, whose business was at the stables? He told your lordships, that he was as often in the house, used to wait at table when company was there; and that let him come which way he would, he should have seen him coming or going, or have heard of him in the family, if he was a person that had frequented his master's house.

Some of the other servants likewise spoke as fully to these circumstances.

We have likewise shewn your lordships by Mr. Pope, who has been for those two or three last years, the most constant companion of his

lordship's hours; two or three days, he says, almost in every week, and an hour or two almost in every of those days; that his lordship generally sat in one room, which I think was his bedchamber; that he was admitted to him at all hours, and into all companies, and never found the discourse change at his coming in: that his lordship never in the least discovered any thoughts or intentions like those now charged upon him; but had heard occasionally many things drop from the Bishop, of a tendency directly contrary. And to this we might have called many others, if it were necessary.

We were likewise ready to lay before your lordships, several laborious and intricate searches, several public buildings, and controversies in matters of literature with different persons, which my Lord Bishop was engaged in last summer; and would have been a full employment for some men's whole lives: but your lordships did not think it necessary; being, as we hope, fully satisfied and convinced of my Lord Bishop's innocency, by that variety of proof which we had before made.

There are, my lords, some other observations that might be made: but have been, I doubt not, already much better taken notice of by the learned gentleman that spoke before me; and I think this is the substance and purport of the evidence that has been hitherto offered on both sides.

What the issue or success of this long hearing may be, I know not; that is in your lordships' pleasure only to determine; to acquit or to condemn: but I hope you will say, We find in him no fault at all.

The proof which has been against the Bishop (if it can deserve that name) has neither been such as is reasonable in itself, nor agreeable to the known rules and proceedings of law; but chiefly by probabilities, circumstances, conjectures and suppositions: whereas we have encountered and disproved even them, by far greater probabilities, much stronger circumstances, and also by such evidence, as would be convincing and sufficient in any court of law or equity within the kingdom.

And upon the whole, I hope I may venture to affirm, that there does not now remain the least suspicion of the charge brought against the Bishop; not even a suspicion of a suspicion of high treason; not one probable probability, or one presumptive presumption: I mean, that there is not now remaining before your lordships the least degree of probability, or the very lowest sort of presumption that is known in law: and therefore shall humbly conclude with the same prayer sir Constantine Phipps has made before me, that your lordships will reject this Bill.

The *Bishop* then spoke in his own defence, as follows:

My lords; I have been under a very long and close confinement, and have been treated with such severity, and so great indignity, as I believe no prisoner in the Tower, of my age, and function, and rank, ever was. By which means, what strength and use of my limbs I had, when I was first committed in August last, is now so far declined, that I am very unfit to make my defence against a Bill of such an extraordinary nature.

The great weakness of body and mind under which I labour, such usage, such hardships, such insults, as I have undergone, might have broken a more resolute spirit, and much stronger constitution than falls to my share.

Your lordships were pleased to permit me to appear before the House of Commons, if I thought fit, lest my silence should be turned to my disadvantage; as, in fact, the counsel for the Bill have done their utmost towards it.

I should not have thought to decline any occasion of justifying myself; but I crave leave to tell your lordships some reasons why I did not appear there, and make use of the leave your lordships gave me.

After seven months of close imprisonment, I was not a little surprized when I heard, that on the 11th of March, by the House of Commons, it was thus resolved, "That it appears to this House, that Francis lord bishop of Rochester, was principally concerned in forming, directing and carrying on a detestable conspiracy," &c.

Upon duly weighing which Resolution, and the copy of the Bill, I found not any thing charged in the Bill, but what was fully contained, and previously resolved in this vote; and therefore whatsoever should have been offered on my behalf to that House, would have been an express contradiction to it. And what hopes I could have of success in such an attempt, I need not say: what they sent me was the preamble of the Bill only, which they could not alter consistent with what they had resolved.

The Bill itself was to inflict pains and penalties, which followed; but there was no room to object against any of those which they had not then declared; they have since been added, and sent up to your lordships, in like manner, without any oath made, or any criminal act proved against me by any living witness. And is a person, thus sentenced below, to be deprived of all his preferments, and his very function, and to be a perpetual exile, and to be rendered incapable of any office and employment? To be one whom no man must correspond with by letters, messages, or otherwise? And, my lords, one who is a bishop of the Church of England, and a lord of parliament?

It is the first instance wherein a member of this House hath been so treated and prejudged, and (as I have once before said to your lordships) I pray God it may be the last, and that such precedents in this kingdom may not be multiplied in after-times.

My counsel have amply done their part, by arguing the points of law, by explaining and enforcing the evidence, and shewing the little colour, appearance and shadow of proofs against

reasons, that the fictitious names supposed to denote my Lord Bishop cannot be applicable to him with any colour, truth or decency; that there is a great doubt to be made, whether many others of those fictitious names were really intended for the persons supposed to be denoted by them; and especially, that Jackson, to whom the letter of the 20th of April is addressed, we have proved by various arguments, and even from those lights the committee have afforded us, could not possibly mean the Pretender, whosoever else it may mean; and consequently that that letter (if it were wrote by Kelly, and dictated by the Bishop) cannot be high treason.

And as to the articles of times, and the accounts of my Lord Bishop's coming and going, it must be owned they are sometimes right, but as often wrong.

There is no doubt but the correspondents on this side the water, whoever they were, whether out of malice or vanity, or out of any other inducement, apprized themselves as well as they could of the Bishop's motions to and fro, in order to give the better colour or probability to what they said of him. But yet it has happened, unluckily to them, as your lordships have heard, that out of six or seven instances occurring in these letters, two only are true; two of them may be doubted whether true or false, because ambiguously expressed; but three of them are gross mistakes, as appears even by the accounts of their own witnesses.

And the mistakes are the more remarkable, because they all affirm the Bishop to have been in the country, when he positively was not; whereas it was ten to one, but that the mere guesses of a stranger at that time of the year, had been true; and the rather because his lordship was really in the country ten days to one that he was in town, all last summer.

There is another thing remains for me yet to speak to, and that is the intimacy of my Lord Bishop with Mr. Kelly; which was likewise thrown in to swell the number of circumstances, and as another weighty argument to induce your lordships' belief of the foregoing matters.

But has any thing appeared to your lordships like it, even upon their own evidence? First, a chairman is brought to tell your lordships that he carried Mr. Kelly to the deanery three or four times about four years ago, but the Bishop was not once at home. And a porter says, he carried two letters from Kelly to the Bishop; one of them about Christmas last was twelvemonth, and the other letter some time before that; but received no answer in writing nor message, but only his service to Mr. Kelly. But there is one extraordinary circumstance, which shews him, I confess, to be a very willing evidence, though not so very likely and credible; that is, that this porter, dirty as he must be in the midst of winter, delivered his message to the Bishop in his bed-chamber.

And Malone, the person that usually attended Mr. Kelly, and went on his errands, was asked to the same purpose; and one might have expected that he should have given some account of it, and had been often employed on errands to and from the deanery: but I submit it to your lordships' memory whether he did not say, that he never was at the deanery in his life-time, nor did know to this day where it stood.

Mrs. Kilborn, with whom Mr. Kelly had lodged a considerable time, says, she remembers a message once came to Kelly from the Bishop; but positively denies that my Lord Bishop's coach ever came to fetch Mr. Kelly at her house, as that honourable committee have been pleased to affirm in their Report. And I appeal to your lordships' memory, whether Mrs. Barnes, whom the counsel for the Bill think so credible a witness in some other respects, and with whom it must be confessed Kelly frequently lodged, was not equally positive in this matter, and that she did not believe there could be any friendship or intercourse between the Bishop and Mr. Kelly without her knowing of it.

Thus the supposed intimacy and great acquaintance between my Lord Bishop and Mr. Kelly stand upon their own evidence. And I beseech your lordships to consider, what sort or degree of proof all this can possibly amount to. But we have shewn your lordships the direct contrary, by no less than ten witnesses, servants to my Lord Bishop, some or other of which were always with him, whether he was in town or in the country, and every one of them has lived with his lordship above two years; and they say, as it were with one voice, that they don't remember any such person or name as Kelly or Johnson coming to the house; as they must have remembered him, they say, if he had been frequent in his visits or messages; and some of them say, they usually wrote down the names of those that did come: and the coachman in particular, who has lived four years with his lordship, and appears now as evidence against the Bishop, and therefore cannot be supposed partial to him in his testimony, is yet as positive and peremptory, that he never saw Mr. Kelly or Johnson, at his master's house, in all his time. And being carried to the Tower by a messenger, to see if he could recollect his face, then frankly owned he had never seen his face before. And being asked how he could pretend to know all persons that came to the house, whose business was at the stables? He told your lordships, that he was as often in the house, used to wait at table when company was there; and that let him come which way he would, he should have seen him coming or going, or have heard of him in the family, if he was a person that had frequented his master's house.

Some of the other servants likewise spoke as fully to these circumstances.

We have likewise shewn your lordships by Mr. Pope, who has been for those two or three last years, the most constant companion of his

lordship's hours; two or three days, he says, almost in every week, and an hour or two almost in every of those days; that his lordship generally sat in one room, which I think was his bedchamber; that he was admitted to him at all hours, and into all companies, and never found the discourse change at his coming in: that his lordship never in the least discovered any thoughts or intentions like those now charged upon him; but had heard occasionally many things drop from the Bishop, of a tendency directly contrary. And to this we might have called many others, if it were necessary.

We were likewise ready to lay before your lordships, several laborious and intricate searches, several public buildings, and controversies in matters of literature with different persons, which my Lord Bishop was engaged in last summer; and would have been a full employment for some men's whole lives: but your lordships did not think it necessary; being, as we hope, fully satisfied and convinced of my Lord Bishop's innocency, by that variety of proof which we had before made.

There are, my lords, some other observations that might be made: but have been, I doubt not, already much better taken notice of by the learned gentleman that spoke before me: and I think this is the substance and purport of the evidence that has been hitherto offered on both sides.

What the issue or success of this long hearing may be, I know not; that is in your lordships' pleasure only to determine; to acquit or to condemn: but I hope you will say, We find in him no fault at all.

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My counsel have amply done their part, by arguing the points of law, by explaining and enforcing the evidence, and shewing the little colour, appearance and shadow of proofs against

me, (permit me to call them so) by answering what hath been offered against me, and by setting out the consequence which such a Bill, founded and carried on in such a manner, and which enacts such severe penalties, must and will be attended with.

Yet it becomes me to say something for myself, lest my silence be construed consciousness of guilt, or at least an unwillingness to enter into matters of so dark and perplexed, so nice and tender a nature; as if I was not able, or did not care to clear and explain myself, and rather chose to leave it to the management of others: I thank God, I am under no such restraint, and can speak to your lordships on this subject with great freedom and plainness.

But before I proceed, I beg leave that I may represent to your lordships some particular hardships under which I have laboured.

The first is, reading extracts of anonymous letters, without suffering any other parts of the same letters, though relating to the same subject, to be read.—Another is, excusing the decypherers from answering questions asked by me, and which I thought necessary for my defence; lest they should reveal their art. The next is, not suffering me to be answered by the clerks of the post-office, lest the secrets of that office should be discovered.—Another was, not suffering a person, who had been at least ten years out of the secretary's office, to answer any questions which came to his knowledge by being some years in that office.

Another is, reading examinations neither dated, signed, nor sworn to.

Another is, reading letters supposed to be criminal, writ in another man's hand, and supposed to be dictated by me, without offering any proof that I either dictated them, or was privy to them.

Another is, not allowing me copies of the decyphered letters, though petitioned for, till the trial was so far advanced, and I so employed and weakened by it, that I had not sufficient time to consider them.—Another is, not allowing me to read out of the collection of papers before the House any part of them, in order to discharge myself, but what hath been read by clerks.—And all this in a proceeding where the counsel for the Bill profess they have no legal evidence, and that they are not to be confined to the rules of any court of law or equity; though, as often as it is for their service, they constantly shelter themselves under it.

My lords, these are the hardships which I previously mention, and humbly lay before your lordships.

By your lordships' leave, I proceed now to make that defence, as well as I am able to make it, in the condition of health I am now in; humbly praying your lordships, if I find myself in any degree sinking under it, that you will indulge me, and allow me a little time to go on.

The general charge of the Bill is, that I have been deeply concerned in forming, directing, and carrying on a wicked and detestable conspiracy, and was a principal actor therein.

The charge is divided into two heads:

First, That I traitorously consulted and corresponded with divers persons to raise an insurrection, &c. in this kingdom, to procure foreign forces to invade it, &c.

Secondly, That I traitorously corresponded, with the same intent, with persons employed, &c. But neither part of this charge hath been made good by the counsel for the Bill, nor have they proved, nor attempted to prove me at one consultation, nor is there any thing tends towards such a proof, except the exploded story of the Burford club: and two or three hearsay informations which were mentioned of my lord Strafford, lord North and Grey, lord Orrery, and sir Henry Goring, said to be concerned in the management of this affair. I have met all these lords, I own it, but at different times; and upon the best recollection I can make, I never was in all my life with any three of them at once, unless, perhaps, about some general matters depending in parliament. The earl of Strafford hath visited me, and I have, when in health, dined with him once at his house. At my lord North's table I have not eat: though I have great honour for him, yet I never had any intimacy with him, especially since the affair of the dormitory, wherein he appeared so against me, that I certainly had lost the cause, had not his affairs called him to Holland.

Lawson had sworn, that this lord did often visit me at Bromley; but in truth he never was there above twice or thrice in all his life-time.

I have not been once these two years with lord Orrery on any business whatsoever; we twice dined together at the house of a person, whose name if I should mention, your lordships would not think there was any harm at all in dining there. Sir Henry Goring I never saw in all my life, till he saw me at St. James's, and he was but once at Bromley; and the occasion of his coming to me, was his placing four sons at Westminster school, and intending to breed up some of them to the gospel: the last time I saw sir Harry Goring was about twelve months ago, when I promised to bring down one of his sons to be upon the foundation; and I shall be sorry if I cannot be as good as my word.

Your lordships will excuse me for being so particular, when you consider how dangerous the charge is, and how fit it is to clear the persons charged from such mischievous correspondence; especially since it is with these, and these only, that I have been speaking of, and it is insinuated, that I have held consultations with, to forward the conspiracy.

The first is an intent, and indeed a conspiracy, without a consultation. But how hath that too been made good? Your lordships will observe, that there is not one overt-act, or

circumstance of time or place mentioned, proved, or alleged. I have not therefore consulted or conspired at home.

The next, and the only material part of the charge is, corresponding abroad with the Pretender, &c.

A high and heinous accusation, strongly asserted, much insisted upon; but how maintained, is the question.

The true state of this part of my charge, as well and as fully as I can recollect, is this, (I will not in any degree dissemble before you): 1st, That I did, the 20th of April, 1722, dictate three letters to Mr. Dillon, the late lord Marr, and to the Pretender himself, under the feigned names of Chivers, Musgrave, and Jackson; to which letters the names of Jones, Illington, and 1378, were, by my directions, subscribed.

Secondly, That afterwards two letters, in answer to these two sent to Marr and Dillon, one dated May the 11th, and the other July the 25th, under the feigned names of Motfield and Digby, were intercepted.

Thirdly, That there is certain intercepted correspondence between the Pretender's agents abroad and Kelly here, carried on by him; and that I was at the head of it, and am answerable for what it contains.

This is the substance of my charge; all other particular circumstances are made use of, as they thought would give light and strength to one or other of those articles.

As to the first of these points, that I did dictate these letters.

That it could not be possible that I dictated these letters, hath been made out to your lordships by such a concurrence of evidence, so clear, so full and legal, as I persuade myself can have left no doubt remaining upon any candid and indifferent person: a plain matter of fact, supported by such testimony, cannot be overthrown by little guesses and consequential surmises.

My lords, I was under the known difficulty of proving a negative, which in many cases is not to be done; but it so happens in this case, that peculiar circumstances attend it as to the point of time. My being disabled in my chamber, and attended before and after that time by some of my servants, and receiving frequent messages from others: the agreeing testimony of my servants, that no stranger came near me about that time, and for some time before and after; and the full evidence of the school at Westminster hath enabled my several servants to recollect the time, and to furnish such a proof of my innocence in this matter, as is not to be mistaken, and shews the clearness of the impossibility of it.

The clerks of the post-office swear, they believe these three letters to have been in the hand-writing of Mr. Kelly, my supposed amanuensis. Your lordships will remember, that their oaths were at four months distance from the time of seeing those letters; during the whole series of which time it never hath appeared, that they have compared one original with another, and the only original, as a specimen, hath been proved at your lordships' bar, not to be the hand-writing of Mr. Kelly: and be pleased to remember, the very supposition of Mr. Kelly's being my secretary, or any ways intimate with me, hath been fully sworn to be false.

If it be said, who then writ those letters, and with what view were they writ? The answer to this is obvious: my being here at your lordships' bar sufficiently explains it. It is enough to prove, that I did not write or dictate them, and I have proved it abundantly. Let but any momentous part of the charge against me be made out with half the evidence, and I will submit without any dispute. Eight or nine such witnesses would have borne down the evidence of one or two that had sworn: but where there is none on the one side, but all on the other side who appear, and that give direct positive evidence, can your lordships deliberate a moment for the reason of giving your judgment, which in doubtful cases ought always to lean to the doubtful side? And so taking this point as it stands, there is an end of the whole matter; for all other insinuations, feigned names, and obscure passages in letters, depending upon this, must fall together.

As to the other part of the accusation, where it is said the letter to Jackson was a letter to the Pretender, I have nothing to do with it; he that writ the letter, when known, will best be able, and most concerned, to disprove it.

Since this objection carries a very odd sound, I shall briefly shew your lordships how that stands. Jackson, in a cypher of Plunkett's, is said to denote the Pretender: that cypher consists of 150 names, of which not one is used in any of the letters attributed to Mr. Kelly; three or four of these names are used by persons supposed to have writ to Mr. Kelly from abroad, but not one of them is used by him; nor doth Jackson ever, in his part of the correspondence, stand for the Pretender, but he is always under other appellations: nay, Plunkett himself, in all his letters writ in decyphered names, never stiles the Pretender Jackson, but either Joseph or Jephson.—Why should a name, used in Kelly's correspondence, be explained by Plunkett's cypher, when Kelly appears to be noways acquainted with him, and Plunkett himself did never dictate to him? I forbear repetition; I only add, that at this rate, there is nothing that may not be proved.

The letter to Dubois there is little said of, because there is no use made of it; it is charged in the report as a letter which I had received from abroad. The tables are now turned, and I myself designed to have sent this letter to a feigned correspondent, but kept it among my papers under my seal: for what end? The letter itself is an arrant delusion: why, to furnish proof, which is much wanted, of my receiving letters that were directed Jones and Illington; and it is very strange, that I, who am repre-

sented as being so very cautious, should be so negligent in this, and preserve something that is of no use, and yet might hurt me so much, when discovered.

It is absurd to think, that I should by that means mention the name of my correspondent, and mention the name of Johnson, which the committee of the Lower House observe was constantly with me.

I know not what farther can be said for this matter, till the counsel have further explained it, and shewed what use they make of this letter, which hath given your lordships so much trouble, and which I own I do not comprehend.

Here is still a fifth letter, which I have acknowledged to be my hand; that which was taken on my servant. Mr. Reeves hath made some uncharitable observations upon it, which, for aught I know, may be allowed as the form of law in the ordinary courts; but, I am sure, in a court of equity, the most favourable construction ought to take place. I have taken minutes of his observations, and I think they are these: he observes that the Bishop doth not in his letter insist on his innocence in general, but considers only what evidence doth affect him.

It comes out, at last, for whom my letter was designed, and I think that an answer to Mr. Reeves's first observation, and I shall explain it no further. He observes next, though I clear myself from the knowledge of Layer, Neynoe, &c. there I say nothing of Kelly.

The gentleman I designed the letter for, knows it was in answer to one wrote to me about Layer, and will swear it himself, if there was room for it.

The third observation is, where speaking of myself, I say, "If I cannot ward the blow, I must be a prisoner some years without remedy:" from which he is pleased to infer, not in that good-natured way he generally did, my meaning must be, that I was conscious of guilt.

I apprehended an impeachment would have been lodged and never prosecuted, as in the Case of my lord Danby* and the earl of Oxford;† and then I should have lain without trial, and without bread.

The second article of my charge, is the two letters from Marr and Dillon, under the feigned names of Motfield and Digby, which were intercepted.

One of these they have dropt.

That I received them, is not pretended; both letters, though without a criminal expression, or word of business in either of them, would yet have affected me in some degree, if received by me, and I was the person, as is supposed, who writ the letters to which they are answers. That I used to have any correspondence, is that proved? Is not one and the same necessary in order to ascertain the charge?

Any man that pleases may write to me, and take those names upon him; I am not to answer for that, unless I have appeared to receive them, and kept up the correspondence.

The letter from Motfield, dated the 11th of May, cannot be reasonably thought to have been wrote with any other view than that of being intercepted, and of fixing upon me the letter of April 20th.

This letter is committed to the common post-office, and sent upon this errand; one may doubt who writ it, but one cannot doubt with what design it was writ: your lordships' wisdom will see through those malicious disguises, and not make me account for letters which have been bandied to and fro, between unknown correspondents, on a design to raise a suspicion of a third person, altogether a stranger to what is writ. And here I desire that the observation made by one of my counsel may not be forgot; that is, all the intercepted letters from abroad, mention persons that lay hid under secret names, and are discovered by doing of such deeds, and by such circumstances as will fasten those names upon them: though the committee were not at a guess, yet they were often at a loss.

In my case, the fictitious names applied to me are often attended with such descriptions and circumstances, as very naturally lead those that offer these letters to fix them on me. The writers of them use all their art not to disguise, but to open the thing, and seem to be in pain lest they should not be well enough understood.

This being contrary to the method of reserves in all other cases, smells strong of a malicious design.

The letter of July 25th, from Digby to Weston, is not so well contrived as it should have been; yet I am to be understood by it, because of the circumstances I was then under, which the writer was apprised of.

These are the only two instances of letters supposed to be writ from abroad: they are not consistent: shall they affect me in so high a manner?

It remains to be considered in the third place, whether there was a supported correspondence between the Pretender and his agents, and Mr. Kelly here? Whether I was at the head of it, and am justly to answer for it? Mr. Kelly, I hear, hath owned at your bar, and declared, which I also declare, I never knew a line of any letter he writ to foreign parts.

I meddle not with what concerns him any further than when it may affect me.

The chief part is the present of the dog; the account of that is in a letter to Hatfield, dated May 5, not signed; in which are these words, "The little dog was sent ten days ago, and ordered to be delivered to you:" but there is no intimation in this, or any other letter from abroad, that this present was intended for me.

In two letters from hence, by whom writ it doth not appear, somebody is meant under the

* See his Cases, vol. 11, p. 599; vol. 13, p. 1263.

† See his Case, vol. 15, p. 1046.

different names of Mr. Jones and Mr. Illington, in such manner as designed for the same person; but the circumstances are neither applicable to myself nor my wife, particularly. The letter dated May 7th, from Hatfield to Musgrave, being five days after the burial of my wife, cannot mean her; and being but five days after, it can as little mean me: so that the writer of this letter must either have known nothing of my family affairs, or, if he did, must dissemble his knowledge of them to raise a suspicion; and in either case what he says is not to be regarded. The surgeon and Mr. Kelly only knew any thing of this matter, and they can best clear it.

Mrs. Barnes, she varies, and sometimes the dog is for me, and sometimes for her.

As for myself, I never asked for, received, or saw this present, nor know any thing of it, but from common fame; nor have I, to this day, had any message or letter whatsoever concerning it. The end of this design seems to be, to point me out by the name of Jones and Illington, subscribed to the letters of April 20th, by using them again in relation to this present.

And perhaps they are not much in the wrong to think that one intercepted dog should be of as much use as ten intercepted letters. Both contrivances then must have succeeded, had I not been able to prove that those letters were not writ with my order or knowledge; and therefore the use of those names, in subsequent letters, is a continuance of the fraud, and this obviously runs through the whole of the correspondence: for wherever the names of Jones and Illington are, they are used in applying them to me, because they are the same.

These points have not only been denied, but disproved with all manner of credence and clearness.

My counsel have shewed, that all these suspicious correspondences are to the last degree absurd to apply to me, and no one would apply them: that I could not order the letters of the 20th of April, to which the names of Jones, &c. are subscribed, I think is plain, and then the evidence falls which depends upon it.

As to the journeys to and from Bromley, where the prisoner Kelly had frequent access to me, and therefore I might probably dictate those letters, the counsel for the Bill have not opened themselves on that head; but your lordships have heard it made out, and because it is material I shall repeat it.

[Here Wood's Examination was read.]

By all these accounts, nothing could have been easier for the persons themselves to manage here, than getting an account of my neighbours, in order to render the contrivance more plausible.

That Mr. Kelly is no stranger to me I own; but that he is in any degree intimate with me, or frequently saw me, I deny. And what evidence is there from them to the contrary? Or how is this solemn denial at your bar contradicted?

The chairman says, He carried him twice or thrice to the deanery, three or four years ago; and this Brown, the chairman, he swears, He carried me once in three or four years time. I believe he may. The porter he says, that he brought a letter and some stockings from Kelly to me. The foundation of this story is true, for Mr. Kelly used to furnish me with beaver stockings and gloves: not but that the circumstance of the porter coming up to my bed-chamber at that dirty time of the year, is very extraordinary; and even this evidence owns, he was never sent by me to him.

Now on the other side, there is the evidence of almost all my servants, who have, upon oath, attested, that they do not know either the name or the face of Mr. Kelly, which could not possibly be, did he use frequently to resort to me. Such a slight acquaintance as I had with him, could not be any temptation to enter into secrets with him, of such a dangerous consequence as these are, which the Report insinuates to have passed between us: however, suspicion is not now the business. They that prove some things may be allowed to suppose more; they that prove nothing have no right to indulge their suspicions and conjectures to the ruin of any man: twenty probabilities, allowed to be such, are not equal to any one matter of fact, well attested; it may strengthen the fact, but cannot support it. They cannot be evidence themselves, because one probability may be set against another.

I use this distinction between evidence in law, and reasonable evidence, because the counsel for the Bill have asserted something like it.

I own I always thought the public law of the state, the public reason of the state; and whatever it is in another country, yet, in this country, no evidence can be reasonable that is not legal. But I ask, What sort of evidence, either in reason or law, is brought against me? How am I proved to consult and correspond, to raise an insurrection against his majesty and his kingdom, and to procure a foreign force to invade the same in favour of the Pretender?

How am I proved, in the second place, to have corresponded with the same Pretender, and with persons employed by him? Is one article of these charges made out against me with any colour of reason? Suppositions without proof, suppositions disproved, and shewn to be vain, and unjust.

If the proof in these cases wants strength, can the hearsay of Neynoe supply the want of proof, and render it valid, since Neynoe pretends, for aught that appears, not to have known any thing of me? He only heard Kelly say so, and Mr. Kelly denies it; and there is, I think, no reason, why such a dead evidence should affect me, or Kelly himself, much less me through him. Was Neynoe alive, and Kelly dead, and incapable of contradicting what Neynoe said, I believe what Neynoe said would not be of any weight; besides, what

Neynoe dead says, and Kelly now alive denies, ought not to have any force.

Concerning hearsay evidence in general, and concerning the due regard to it, I humbly desire your lordships, that a passage may be read out of sir John Fenwick's Bill of Attainder. [The whole preamble read.]*

My lords, I humbly desired to have this read, because I thought it would take away a distinction between legal and parliamentary evidence; that what was not legal might be parliamentary. I believe here is a condemnation of him by parliament; therefore, I think, the condemnation of him must be by parliamentary evidence. It is recited in this act, as one of the inducements that moved the King, Lords, and Commons to pass that act, that sir John Fenwick had contrived and framed several papers, &c. only by hearsay.

Shall that be accepted in this parliament for evidence, which is declared the only motive of attainting a man in another? If it was judged hard in sir John Fenwick's case to charge a man by hearsay, can the being thus charged be any proof against me? Sure the House of Commons in 96, that brought that in, would have so thought, nor would those of your lordships consented here, or elsewhere, to have passed it.

As for those that did not consent, I will venture to say, I am exceedingly puzzled to know why they did not oppose sir John Fenwick, but favoured his case, and are yet against me. Is the guilt objected to me, if proved, in any measure like his? Or is there any comparison between the proof against him and me.

As to the paper and information given in by Neynoe, and printed in the Appendix, it is plain he was drawn in to have sworn backward or forward, to have affirmed or denied any thing. He knew a certain lord of the council, that gave me notice of my being taken up some days before it happened. He knew what use and purpose the protests of your lordships were chiefly designed for and calculated; and it appears by his paper that was taken in his pocket after his death, that he had undertaken to give a positive account, and designed either to ask or receive such a sum of money.

It is said he was the late earl Marishall's bed fellow for several months, and had drawn up heads for memorials to be delivered to the regent; but he had kept no copy of these heads, or foul draughts which would have shewn whether they were given in to promote it, or discover it; in either case the evidence of being then employed would have been of service: but they have not been able to produce a line of such heads or memorials, yet the Report of the House of Commons, upon the basis of these memorials, builds the whole fabric. He knew that I went under the names of Jones and Illington, and undoubtedly he knew Mr. Dubois: If the scheme of writing that letter myself had been seen, he would have found out a reason for the correspondence; and 500*l.* would have made him affirm, that he carried the letter himself. He knew the Pretender's particular opinion of me, or of any body else, and that he relied on advices from me: how did he know that? He told him so. Who told him? It is not supposed Mr. Kelly had it from himself, but from persons of high estate, that were near the Pretender.

Let me speak, my lords, as always I hope I shall, with that modesty as becomes justice, but yet with freedom, to you.

Hath nothing been opened to you concerning this man's character, and his secret transactions? Is it possible to believe this pretender to secrecy could have had, or shall he still have any degree of weight, that threw away his life, rather than venture to stand to the truth of what he said before his death, and then he could have been contradicted, or pangs of conscience might have made him unsay what he had said? But a dead man can retract nothing; what he hath writ, he hath writ: the accusation must stand just as it did, so far as it concerns him; and we are deprived of the advantage, which truth and remorse once extorted, and would have again extorted from him. However, I would have been glad to have had all that ever this wretch said; and would hope that by comparing of the several stories, which he several times told, some light might have been gained, which is now wanted: Particularly by the knowledge of what he said freely and voluntarily, when he was in good humour, and before his rough usage, on his return from Rome, had frighted him; but I think we have the evidence only of a few of the last days of his life, all the preceding time is blank. He underwent frequent examinations, but they were not, it seems, so maturely weighed and digested as to be thought worth the committing to writing: but he is gone to his place, and hath answered for what he hath said at another tribunal. I desire not to disturb his ashes, farther than what is necessary for my defence.

Your lordships will observe first, the inconsistency of some part of the charge: Secondly, the improbability of it. The Report

* See it vol. 13, p. 547. "I have heard that the Bishop desired to know of his counsel at one of their consultations, whether in treating of hearsay evidence, they should mention the preamble of sir John Fenwick's Bill of Attainder, and Mr. Wynne informing his lordship the passage had occurred to him, and in what manner he intended to apply it, the Bishop desired him to leave out what he intended upon that point, for that he should carry his reasoning upon it much further, and that it would moreover be of great service in giving him an opportunity to sit down and repose his weary limbs while the act was read, in which he hoped their lordships would indulge him. Mr. W. accordingly left this passage entire to his lordship, and he made all the use intended of it."—Wynne's 'Observations on the Catalogue of the Royal and Noble Authors, &c.'

takes notice of three several periods, or stages of time, when, by consequence of some informations from the regent, the design did not take place: the first was, during the election; the second was, the king's going to Hanover; and the third was, the breaking up of the camp. There is not the least hint as to the last of these three designs, in any of the papers; though in the recital of the Bill it is mentioned as the third part of the plot, and the most detestable part of the design, to lay violent hands on his majesty and his royal highness.

There is not the least colour of proof as to the first part of the conspiracy, which was to take place at the election; their only reason for that, is from a passage, where it is said, that the present opportunity is elapsed, that is, the opportunity of the election.

I shall recite the passage, as it lies in the intercepted letter, and make some reflections on it: "Notwithstanding the opportunity is elapsed," (says the writer to Jackson) "I agree with you, another may offer before the end of the year, though not perhaps every way so favourable."

The committee suppose this letter to be from Kelly, and dictated by me; and they suppose the words to refer to the time of the election, and from those suppositions infer that I knew something of it. On the contrary, I shall, on the two first suppositions, shew the impossibility of it; if this was a letter from me, or from any other person, dictated by me to the Pretender, I must write as in answer to some letter sent from them to me, in repeating the expression; and his opinion in the letter must have been founded on intelligence before received: this intelligence, considering the distance between London and Rome, must have been communicated two months, if not longer, before the date of this letter, if we go back two months, and talk of the election being elapsed, it was not begun; consequently that opportunity in the letter could not possibly mean the time of the election; and if so, it is impossible that it should be a letter to the Pretender, that can consist with the charge of the person's writing in April 1720.

If it be a letter writ in good earnest, it appears they had given over all thoughts at that time: I agree with you, says he, another may offer before the end of the year: and yet he finds some words in a letter writ ten days after, wherein, under the name of Jones, I am made to be deeply concerned in a conspiracy.

How can this be consistent, if I writ and directed that letter, and was engaged in the second part of the conspiracy?

Both cannot be true, both may be false; and I hope I have satisfied your lordships, that as I did not dictate the one, so I was no ways concerned in the other.

Can any one believe, that under the sad circumstance of being afflicted by the death of my wife, I should be concerned in an affair of this dangerous nature? Was that a time to provide for a stranger? And for a man, unless under the power of prejudice, to believe such an improbability, or that I had such a conjecture? I forbear former instances.

I shall now consider the improbability, as well as inconsistency of the charge brought against me without positive proof. You will allow me to answer the indictment in the same manner as it is laid.

Is it probable that if I were engaged in any such design, no footsteps should be seen of any correspondence I had with the late duke of Ormond, to whom, of all persons abroad, I was best known, and to whom I had the greatest regard, and still have all the regard that is consistent with my duty to my king and country?

Is it probable that I would choose rather to engage in such a design with Mr. Dillon, a military man I never saw, and with the earl of Marr, whom I never conversed with, except when he was secretary of state?

Did I not know, what all the world thinks, that he had left the Pretender several years, and had a pension abroad? Is this a season for me to enter into conferences with him about restoring the Pretender; and do this not by messages but by letters, not sent by messengers but by the common post? That by thus writing to him by the post, I should advise him after the same manner to write to me, and by these means furnish opportunities towards detecting the persons, and bringing myself into danger? How doth that consist with the caution and secrecy which are said to belong to me? Must not I have been rash to have laid myself open in such a manner? This is an inconsistent scheme, the other a bold assertion. Is it probable, when attending the sick bed of my wife, and expecting her death, not daily but hourly, that I should enter into negociations of this kind?

There was no need of dispatching any of those three letters, merely to excuse my not writing: the circumstances of my family had been a sufficient apology, and more effectual.

Is it probable, that when I was carrying on public buildings of various kinds at Westminster, and Bromley, consulting all the books from the Westminster foundation, engaging in a correspondence with learned men, about settling an important point of divinity; that at that very time I should be carrying on a conspiracy? Those that entertain such thoughts without reason, may also condemn me without argument.

Is it probable that I should meet and consult, in order to carry on and forward this correspondence with nobody, and no where?

That I, who always lived at home, and except at dinner-time, never stirred out of my chamber; received all persons that visited me, and was denied to none, should have an opportunity to be so engaged? And if I had, that none of my domestics and friends should ever observe any appearance of any such thing? No evidence among my papers, though they were all seized at both my houses, and confining all my servants but one, now, for about ten or

eleven weeks, searching him twice in the Tower, and searching myself, nothing of consequence appears, nor is there any one living witness that charges me with any thing that is really true.

Is it probable that I should form and direct a conspiracy, and carry it on with any success, that am not used to arms, which I am no more acquainted with, than with the persons employed on these occasions? My way of life hath not led me to converse with such men and such matters, except on the occasion of meeting in parliament; but in a council of war I never was. Have I yet, in any instance of my life, meddled remarkably out of my own sphere, in affairs foreign to my business or character? I might have been thought to have been too active in my proper station and business; but I was never charged with war, nor any ways informed in the art of it.

Is it just, that persons concerned in the military way, should be punished without any proof?

And must I, whose way of life is set at the greatest distance from such persons, and from the very suspicion of being concerned with them, suffer all the pains and penalties, short of death, which the parliament can inflict, for a supposed I know not what, and what I don't to this day apprehend?

Here is a plot of a year or two standing, to subvert the government with an armed force, an invasion from abroad, an insurrection at home; just when ripe for execution it is discovered: and twelve months after the contrivance of this scheme, no consultation appears, no men corresponding together, no provision of money, arms or officers——not a man in arms ——And yet the poor Bishop has done all this.

Layer and Plunkett carry on a treasonable correspondence: they go to Rome and receive directions from the Pretender himself to promote his cause—It does no where appear that the Bishop has the least share in, or is any way privy to their practices—And yet the Bishop has done all, he is "principally concerned in forming, directing and carrying on this detestable conspiracy."

What could tempt me to step thus out of my way? Was it ambition, and a desire of climbing into a higher station in the Church? There is not a man in my office farther removed from this than I am; I have a hundred times said, and sincerely resolved, I would have been nothing more than I was at a time when I little thought of being any thing before; and I could give an instance of this kind if I thought proper.

Was money my aim? I always despised it, too much, perhaps, considering what occasion I am now like to have for it: for out of a poor bishopric of 500*l.* per annum, I have laid out no less than 2,000*l.* towards repairs of the church and episcopal palace; nor did I take one shilling for dilapidations. The rest of my little income has been spent as is necessary, as I am a bishop. Nor do I repent of those expences now, (though since my long confinement I have not received the least part of the income in my deanery) not doubting in the least, but that God, who hath liberally provided for me hitherto, will still do it, and on his good providence I securely rely.

Was I influenced by any dislike of the established religion, and secretly inclined towards a church of greater pomp and power? I have, my lords, ever since I knew what Popery was, opposed it; and the better I knew it, the more I disliked it.

I began my study in divinity, when the Popish controversy grew hot about that immortal book of Tillotson's, when he undertook the defence of the Protestant cause in general; and as such I esteemed him above all.

You will pardon me, my lords, if I mention one thing.

Thirty years ago, I writ in defence of Martin Luther, and have preached and writ to that purpose from my infancy; and whatever happens to me, I will suffer any thing, and will, by God's grace, burn at the stake, rather than depart from any material point of the Protestant religion, as professed in the Church of England.

Once more: can I be supposed to favour arbitrary power? The whole tenor of my life hath been otherwise: I was always a friend of the liberty of the subject, and to the best of my power constantly maintained it: I may have been thought mistaken in the measures I took to support it.

It matters not by what party I was called, so my actions are uniform.

To return to the point: the charge brought against me in the manner it is brought, is improbable: if I could be guilty of it, I must have acted under a spirit of infatuation; yet I have never been thought an idiot or a madman.

My lords, as to the pains and penalties contained in this Bill, they are great and grievous beyond example in their nature and direction.

I am here, my lords, and have been expecting an immediate trial. I have, my lords, declined no impeachment. The correspondence with the earl of Clarendon * was made treason, but with me it is only felony. He was allowed the conversation of his children, by the express words of the act: mine are not so much as to write, so as to be sent to me.

What is most particular in my case I will repeat distinctly, that my reverend brethren may hear it. I am rendered incapable of using or exercising any office, function, authority, or power ecclesiastical, not only in his majesty's dominions, but any where else. Very hard! That such spiritual power as is not derived from men, but God himself, should be taken from me!

And I am not only deprived of all offices, dignities and benefices ecclesiastical, and for ever banished the realm, but likewise precluded from the benefit of royal clemency, and made

* See his Case, vol. 6, p. 291.

utterly incapable of any pardon by his majesty, his heirs and successors.

My lords, I insist on my innocence, that I am not guilty; and if I am not proved so, your lordships will thus judge; if otherwise, I persuade myself I shall find some degree of mercy.

You will not strip a man of his substance, and then send him where he cannot subsist; you will not send him among strangers, and then hinder others from performing humanity to him; you will not give him less time to order his affairs and depart the kingdom, than the Bill hath taken in passing through both Houses.

The great man, I last mentioned, carried a great fortune with him into foreign parts, and had the languages; was well acquainted abroad: the reverse of all this is my case; I indeed am like him in nothing but his innocency, and his punishment. It is in no man's power to make us differ in the one, but it is in your lordships' power to make us differ widely in the other, and I hope your lordships will do it.

But to sum up the arguments: it hath been frequently observed, that the higher the crimes are, the fuller the proofs ought to be. Here is a charge of high treason brought against me, with no evidence at all.

My lords, pardon me, what is not evidence at law, can never be made so by any power on earth: for the law that required the evidence, is as much the law of the land as that which declares the crime.

It is equally unjust to declare any proof legal, because of my prosecution: as extraordinary would it be, to declare the acts themselves, *ex post facto*.

Never was there a charge of so high a nature, and so weakly proved.

A person dead, so that there is not an opportunity to falsify him by contradicting him, a charge not supported by any one evidence, nor by any one proof of any thing that hath been writ or received by me, nor even by any one criminal word proved to have been spoken by me; but by intercepted letters and correspondence, in which appears not the least certainty.

Some of those letters shewn to persons with a design to fasten something on them; others writ in cyphers and fictitious names, throwing out dark and abstruse hints of what persons went by those names, sometimes true and sometimes doubtful, and often false, who continue all the while strangers to the whole transaction, and never make the discovery, till they feel and find it advancing itself towards them: my lords, this is my case, in short.

I have a hard task to prove my innocency: shall I stand convicted before your lordships on such an evidence as this? The hearsay of an hearsay; a party dead, and that denied what he said; by strange and obscure passages, and fictitious names in letters, by the conjecture of decypherers, without any opportunity given me of examining and looking into the decyphering; by the depositions of post-office clerks about the similitude of hands; their depositions made at distant times, and without comparing any one of the originals, by a strange interpretation of them: for nothing more, I am persuaded, can be made of the arguments, than what is called the intercepted correspondence.

Shall I, my lords, be deprived of all that is dear to me, and in the circumstances I am in, scarce able to bear up, and by such an evidence as would not be admitted in any other cause or any other court; and would hardly affect a Jew in the Inquisition of Spain?

And shall it be received against a bishop of this Church, and a member of this House? God forbid! Give me leave to make mention of a text in holy writ: "Against an elder receive not an accusation, but before two or three witnesses." It is not said, Condemn him not upon an accusation, &c. but receive it not: I am something more than an elder; and shall an accusation against me be countenanced, without any one instance of proof to support it?

This is not directly matter of ecclesiastical constitution: there you read, one witness should not rise up against an elder; but here, at the mouth of two witnesses, or three witnesses, shall the matter be established: and as this rule was translated into the state of the Church, people always thought fit to allow it.

Shall I be the first bishop in this Church condemned upon conjecture, on fictitious names and obscure passages in letters, instead of two or three witnesses?

Will not others endeavour to make the same precedent, and desire the same influence of it to succeeding ages; and even concur in such an act, in order to render me incapable of using or exercising any power or authority, &c.? Is this good divinity, or good policy?

As to the justice of the legislature, in some respects it hath a greater power than the sovereign legislator of the universe: for he can do nothing unjust. But though there are no limits to be set to a parliament, yet they are generally thought to restrain themselves, to guide their proceedings in criminal cases, according to the known law.

The parliament may order a criminal to be tortured: who can say they cannot? But they never did, nor never will, I hope; because torture, though used in other countries, is not known here.

Is it not torturing, to inflict pains and penalties on persons only suspected of guilt, not plainly proved guilty? It is not much unlike it. The parliament may, if they please, as well upon Bills of perpetual imprisonment, as upon Bills of perpetual exile, reserve to the crown a power to determine the one as well as the other. They have reserved it in the former case, but have not reserved it here in the other. The law knows nothing of such absolute, perpetual imprisonments.

The parliament may, in like manner, condemn a man on a charge of accumulated and constructive treason. They did so in the case

of the great lord Strafford, and that by accumulated and constructive proof of such treason; that is, by proofs so interpreted, as plainly to communicate light and strength to each other, and so to have all the force without the formality of evidence. Was such proof ever admitted by any one to deprive his fellow-subject of his fortune, of his estate, his friends, and country, and send him in his old age, without language or hope, without employment to get the necessaries of life, to starve? I say again, God forbid!

My ruin is not of that moment to any number of men, to make it worth their while to violate, or even to seem to violate the constitution in any degree, which they ought to preserve against any attempts whatsoever.

But where once such extraordinary steps as these are taken, and we depart from the fixed rules and forms of justice, to try untrodden paths, no man knows where this shall stop.

Though I am worthy of no regard, though whatsoever is done to me may, for that reason, be looked upon to be just; yet your lordships will have some regard to your own lasting interest, and that of posterity.

This is a proceeding with which the constitution is not acquainted; which, under the pretence of supporting it, will at last effectually destroy it.

For God's sake lay aside these extraordinary proceedings; set not up these new and dangerous precedents; I, for my part, will voluntarily and cheerfully go into perpetual banishment, and please myself that I am, in some measure, the occasion of putting a stop to such precedents, and doing some good to my country, and will live, wherever I am, praying for its prosperity; and do, with the word of father Paul to the state of Venice, say, 'Esto perpetuo:' It is not my departing from it I am concerned for; let me depart, and let my country be fixed upon the immoveable foundation of law and justice, and stand for ever.

I have, my lords, taken up much of your lordships' time, yet I must beg your attention a little longer.

Some part of my charge hath been disproved by direct and full evidence, particularly that of writing the letters of the 20th of April, or that I knew who wrote them; which I utterly deny that I ever did, or as yet do know. Other parts of the charge there are, which are not capable of such disproof, nor indeed require it; there I rest. But, my lords, there is a way allowed of vindicating myself, it is generally negative; that is, by protesting and declaring my innocence to your lordships, in the most deliberate, serious, and solemn manner; and appealing to God, the searcher of hearts, as to the truth of what I say, as I do it in what follows. I am charged in the Report with directing a correspondence to Mr. Kelly; but I solemnly deny that I ever, directly or indirectly, saw a single line of any of their letters, till I met with them in print. Nor were the contents of any of them communicated to me. I do in the next place deny, that I was ever privy to any memorial to be drawn up to be delivered to the Regent. Nor was I ever acquainted with any attempt to be made on the king's going to Hanover, or at the time of the election. Nor did I hear the least rumour of a plot to take place after the breaking up of the camp, till some time after Mr. Layer's commitment. I do with the same solemnity declare, that I never collected, remitted, received, or asked any money of any man to facilitate these designs; nor was I ever acquainted with, or had any remittances whatsoever from, any of those persons. I never drew any declaration, minutes, or paper in the name of the Pretender, as is expressly charged upon me. And I never knew of any commission issued, preparation of arms, officers, or soldiers, or the methods taken to procure any, in order to raise an insurrection in these kingdoms. All this I declare to be true, and will so declare to the last gasp of my breath.

And I am sure, the further your lordships examine into this affair, the more you will be convinced of my innocency. These contain all the capital articles of which I am accused in the Report of the House of Commons.

Had the charge been as fully proved as ascertained, it had been vain to make protestations of my innocency, though never so solemn.

But as the charge is only supported by the slightest probabilities, and which cannot be disproved in any instance, without proving a negative, allow the solemn asseverations of a man in behalf of his own innocence to have their due weight; and I ask no more, than that they may have as much influence with your lordships as they have truth.

If, on any account, there shall still be thought by your lordships to be any seeming strength in the proofs against me; if by your lordships' judgments, springing from unknown motives, I shall be thought to be guilty; if for any reasons, or necessity of state, of the wisdom and justice of which I am no competent judge; if your lordships shall proceed to pass this Bill against me, God's will be done: "Naked came I out of my mother's womb, and naked shall I return; and whether he gives or takes away, blessed be the name of the Lord!"

On this day, after the Bishop was remanded to the Tower, a motion was made, and the question was put, "That George Kelly, alias Johnson, now a prisoner in the Tower of London, be brought to the bar of this House on Monday morning next, to be examined upon oath, on the Bill, intituled, An act to inflict pains and penalties on Francis lord bishop of Rochester?"—It was resolved in the negative.

"Dissentient.

"1st, Because we think it unquestionable, that the said Kelly is a competent legal witness to the matters charged by the Bill against the Bishop, and could not be legally refused to be sworn as such, if the Bishop were on his trial for the same, in the ordinary course of

justice, and that whether the said Kelly was produced either for or against the Bishop; and we conceive, if the counsel for the Bill had thought fit to have produced him in support of the Bill, that even no legal objection could have been made by the Bishop's counsel against his being so produced and sworn; the Bill passed this House against the said Kelly not having received the royal assent, and there not being in the said Bill in our opinions, any thing that can destroy even his legal testimony, when the same is passed into a law.

"2dly, Because the three letters, dated the 20th of April, 1722, supposed to contain treasonable correspondences with the Pretender and some of his agents, have been made the principal charge against the Bishop, and have been endeavoured to be proved to have been dictated to the said Kelly by the Bishop at or about the time of their date: But this not being as yet done, as we think, by direct or positive proof, by any living witness of the fact, but by circumstances only; we think it most proper, and most safe and just, to endeavour to discover the truth of that material fact, by the best evidence the nature of the thing can admit of; and that this House should not be left under the difficulties of judging, on this extraordinary occasion, from doubtful circumstances, if the fact may be cleared by certain positive proof, and the examination of a competent and a living witness, upon oath, at the bar of this House.

"3dly, Because several living witnesses have been examined on oath, at the bar of this House, on behalf of the Bishop, in order to prove by their positive testimony, and other circumstances, that the Bishop did not dictate or direct, or was any way privy to, the writing the said letters, or any of them; which has in our judgments, rendered it of yet greater importance, that the supposed writer of those letters should be brought under the most strict and solemn examination, before the Bill has passed this House.

"4thly, Because the said Kelly, though examined before committees of both Houses of Parliament and elsewhere, hath not, to our knowledge, been yet examined on oath to the matters contained in this Bill; and it having appeared to us in other instances on this occasion, particularly of Mrs. Barnes examined for the Bill, and of Bingley against it, who have materially varied their examinations at the bar of this House from their former examinations, at the same time declaring that their former examinations were not taken and sworn to by them; we think it may be both dangerous, and derogatory to the honour and justice of this House, not to examine on oath a person capable of discovering the matters of fact on which the justice of the Bill against the Bishop must depend; and especially after the said Kelly hath declared, in the most solemn manner, next to that of his being upon oath, that the Bishop did not dictate, or was privy to the writing, the said letters, or any of them; and the Bishop himself, in his defence, having also, in the most solemn manner of asseveration, declared his innocence in this particular, and expressly referring to the former asseverations of the said Kelly, as we conceive, as a testimony in confirmation of his own asseverations.

"5thly, Because we conceive that the said Kelly was not only a legal witness for or against the Bishop, in the strictest construction of courts of judicature; but the examination of him upon oath, on this Bill, is in every respect whatsoever, in our judgments, less liable to objection than many or most other evidences which on this occasion have been allowed; because the Bill passed by this House against the said Kelly, if it obtains the royal assent, as is most probable, doth, in judgment of law, as hath been declared by the judges, acquit him of any future prosecution for the said treasons therein charged upon him; and there is no judgment or punishment inflicted upon him in the said Bill, which can, when passed, destroy his capacity of giving evidence on any occasion; and the same having been passed by this House, and not passed the royal assent, leaves the said Kelly in our opinions, under less influence, either of hopes or fears, than such witnesses which have been examined on this occasion under commitments and charge of high treason, and, as we conceive, less liable to that objection, than the declaration of Philip Neynoe, which has been read against the Bishop, though never signed or sworn to by him, and the said Neynoe was some months since drowned in endeavouring his escape, and which declaration appears to us to have been made by him under the strongest influences of guilt and terror.

"6thly, We think the crimes charged in the Bill against the said Kelly are in their nature distinct and independent on those charged upon the Bishop; Kelly's guilt, in writing the said treasonable letters proved upon him, being the same, though the Bishop be altogether innocent in relation thereto; for which reason, as we conceive, this House did refuse to permit Kelly, on his Bill, to give evidence that the Bishop did not dictate the said letters; for which reason, we are of opinion that the evidence which Kelly might have given, touching the Bishop's dictating the said letters or not, would have produced no consequence at all with regard to the Bill passed against himself, though it must necessarily have contributed to the proof of the guilt or innocence of the Bishop.

"7thly, This House having, with great honour and justice, declared to several persons produced as witnesses on this occasion, 'that it was not required from them to depose to any thing which did or might tend to their own accusation;' the testimony of the said Kelly, if he had been examined on oath, we doubt not, would have been taken under the same just indulgence; and if he had submitted to have been examined on oath to the matters of this Bill, such his examination, being in that respect

aware of; he takes care that the letters of the 20th of April are in cyphers, and not writ with his own hand; fictitious names are made use of, and he thinks he shall be sheltered by this means from being found out to be the person. The other facts could not be supposed would come out to explain the person.

But, my lords, very often there is a providence in detecting things of this nature; and where the greatest caution and care is used, circumstances (that human prudence could not guard against) are so strong and convincing, that they discover such secret correspondence, and plainly prove who is the person carrying it on.

Some texts of Scripture have been cited on the other side: my lords, I beg leave to use one on this occasion; and that is, "Curse not the king, no not in thy thought; for a bird of the air shall carry the voice, and that which hath wings shall tell the matter."

In these treasonable conspiracies and correspondences against the king and government, (notwithstanding they are carried on so secretly, that the conspirators think nothing can discover them,) there happen sometimes, through Providence, such circumstances which the persons cannot be aware of, that bring those things of darkness to light: and we hope this may be an example, that may deter any person from going in the most secret and concealed way to engage in any thing of this nature.

My lords, there is a matter I shall beg leave to mention to your lordships, because my lord bishop hath insinuated as if I made hard and harsh application of the letter taken upon his servant. My lords, he says that the construction I put upon that letter was not a natural but an ill-natured explication. The letter mentions an impeachment, and says the Bishop in the letter, "If the impeachment cannot be stopt, I am prisoner for some years without remedy."

My lords, I did observe to your lordships on that expression in the letter, that it seemed to import a sense of my lord bishop's guilt, because he said he was unavoidably a prisoner for some years. My lord bishop says, this is by no means a natural, but a forced and ill-natured explication; for in that place he meant no more than, if an impeachment were lodged, it would not be prosecuted, but made use of only that he might be detained a prisoner for some years.

My lords, I must submit to your lordships, which is the most genuine and natural interpretation, that which I put upon the words, or that which my lord bishop of Rochester doth, which so highly reflects on the honour and justice of your lordships and the House of Commons.

My lords, I shall beg leave, in the next place, to take notice of the evidence that hath been given on the behalf of my lord bishop of Rochester, and to consider, whether that is sufficient evidence to satisfy your lordships of his innocence.

My lords, we did read the examination of Mr. Neynoe, one of his examinations, and the last that was taken; they on the other side called for three other examinations, of which the last examination, which we read, was an abstract; they read them all, and, my lords, the examination which we read was consistent with three other examinations, with relation to my lord bishop of Rochester: and I must own that the charge, in the examination of Neynoe, upon my lord bishop of Rochester, is only hearsay from Kelly; that Mr. Kelly did tell Neynoe, that the bishop of Rochester held correspondence with the Pretender and his agents; and that he was employed by the Bishop in writing for him, and carrying on the said correspondences: so far, my lords, it is hearsay, what Mr. Kelly told Neynoe. Now, as to Mr. Kelly himself, it did affect him, by charging that he had confessed to Neynoe, that he did carry on such a correspondence: but as to my lord bishop, it cannot affect him but as hearsay; and we must agree that, if there was nothing else in the case but this, all the arguments made use of against such evidence would be of great weight.

My lords, I cannot say that this charge from Neynoe's examination is of weight to charge the bishop of Rochester, so as to condemn him. My lords, they have urged that if this charge is not to be believed, all comes to nothing: this, say they, is the foundation; and if Neynoe's examination is not sufficient to affect the bishop of Rochester, then all the subsequent evidence falls to the ground.

My lords, I beg leave to observe first, that if we had not Neynoe's examination, the proof against my lord bishop of Rochester is as strong without it as with it; it is certainly evidence of the conspiracy in general, but as to the Bishop it is only a circumstance, to shew that another man had said of the bishop of Rochester, that he was carrying on a correspondence with the Pretender, &c.

But, my lords, taking the examination of Neynoe out of the case, and considering the other facts mentioned and proved to your lordships, there is no occasion of Neynoe's examination; whether Neynoe's examination be false or true, is not material: there is sufficient to prove the bishop of Rochester guilty, for they cannot destroy the other facts and circumstances; and as long as they subsist, they prove the bishop of Rochester to be the person concerned in carrying on this correspondence.

My lords, I beg leave to observe in Neynoe's examination, there is something more than hearsay, there is a fact in it, and we are able to support that fact by other evidence. Neynoe says, that he hath gone several times with Kelly to the bishop of Rochester's, and hath staid a considerable time for him. My lords, we shall prove by another witness, that Neynoe about that time came several times to a house, where he said he waited for a friend of his that was gone to the bishop of Rochester's, and he staid and waited for him three or four times,

for an hour, and an hour and an half together. This will confirm what Neynoe said in that respect to be true.

They say there are several improbabilities contained in Neynoe's examination, and inconsistencies; as to the improbabilities, some of them are mentioned as if there was great weight in them. That, so much insisted on by my lord bishop himself is, that Neynoe says, he was employed to write memorials, and the last he wrote was in December, and that was to desire the regent of France to furnish a body of 5,000 men, to come and invade these kingdoms: the observation made by the bishop of Rochester is, Where are these memorials? Why did he not keep copies of them? For he was at that time concerned in a design to serve himself one way or other; if he designed to betray those persons he corresponded with, it would have been of service to have kept those memorials, to have delivered them to the government: if, on the other side, he had kept to his friends, it would have been proper to have kept them, in order to create a confidence in him, and to shew the part he had in the conspiracy. These observations can have no weight, when your lordships come to consider this was in December, and there was never any application by him to make any discovery of this conspiracy till July following. As to the service it might be to keep them with respect to his party, my lords, we humbly apprehend that, considering him as a man engaged in a correspondence of this kind, a memorial of this nature drawn up by him can be of no use, but to detect himself and injure his party, if he happens to be taken up, and such a memorial found upon him; therefore it was necessary to destroy it.

My lords, there is another thing mentioned with relation to Watson, and the improbability of his being the earl Mareschal; but Neynoe does not say that he was the earl Mareschal, but says, there was one Henry Watson, which he took to be a fictitious name, and does not know who he really was, but he took him to be the earl Mareschal, and he gave him the heads to draw up these memorials.

My lords, we apprehend it is not material who Watson was; he is a person that employed Neynoe to write these memorials, and he might be the earl Mareschal: Neynoe says he took him to be so. Say they, if it was the earl Mareschal, why should he lie several nights with Neynoe? This, say they, is very improbable. If it was him, he was to conceal himself, and take the fittest place for that purpose; therefore conversing with Neynoe, and not owning himself who he was, is not improbable. It is probable he would not discover himself to every person; and though Neynoe was a person engaged in the conspiracy, if Neynoe did not know him to be the earl Mareschal, it might not be proper for him to discover himself to Neynoe.

My lords, I think these are the principal things objected; there are some other little matters, but I think dwelling on such objections as these, is but mis-spending your lordtime.

My lords, that which we humbly insist upon is, Whether Neynoe's examination is an examination to be credited or not credited? We agree it is only hearsay as to the bishop of Rochester, and if we had not other matter, it would not be sufficient; so that we humbly apprehend its being true or false, won't affect this case. If your lordships are of opinion it is false, there is sufficient evidence against the bishop of Rochester without it.

My lords, in the next place, they have produced in evidence several persons that come and give your lordships an account of Neynoe's confessions to them. There is one Mr. Bingley, Mr. Steward and Mr. Skeene, and two other persons, that give an account of what Mr. Skeene and Steward had told them Neynoe had said.

Bingley by his evidence would have it believed, that Neynoe had told him, he was employed by some person in power, to fix several things upon several persons that they were innocent of; that he had said several things that were false, and had imposed upon a great man he had made application to, and had got great sums of money out of him.

My lords, I don't know how far they would carry this; for by what hath been insisted upon by my lord bishop of Rochester, and his counsel, it should seem as if they were labouring to shew from these persons that they have called to be examined, that all the letters relating to this correspondence, the letters of the 20th of April, and subsequent letters that relate to the particular facts that denote Jones and Illington to be my lord bishop of Rochester, were contrived between Neynoe and some other persons, in order to charge my lord bishop of Rochester with being concerned in this conspiracy. This seems to be what they are labouring at by this evidence.

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Mr. Bingley, who hath, at your lordships' bar, owned, that he hath been whipt, pilloried, and imprisoned; and as he hath taken his degrees, as he owned at your lordships' bar, consequently he hath taken the oaths.

As to the character of Mr. Skeene, he hath likewise been produced as a witness, and he carries his evidence farther than the evidence of Mr. Bingley; for whereas Mr. Bingley says, that Neynoe confessed he had imposed upon that honourable person, and had mentioned things that were false, yet he could not say that after the time of his examinations, after Neynoe was brought from Dover to town, he had confessed to him that what he had said on those examinations was false: but Skeene says, that after his examinations he owned that they were false. The last examination was the 27th of September, and he was drowned that night; but as to the examinations before the 27th of September, and out of which that is collected, Mr. Skeene says, Neynoe said to him that they were false.

My lords, as to Mr. Skeene, we shall shew what sort of a man he is, a man attainted of high-treason; and though he is pardoned as to his having his life and liberty given him, he is in all respects an attainted person: he was tried and condemned in the county of Surry for being concerned in the Preston rebellion, and consequently a man of no credit. And as to what he and Steward swear, relating to a conversation with Neynoe, when in custody, we shall shew they never were together after the first night when they supped together. He was asked, whether it was the first night that he had this conversation with Neynoe, and he did not pretend he had any conversation of this nature with Neynoe the first night; and if it was not the first night, we shall shew it could not be afterwards, for Neynoe was kept in a room by himself, Skeene and Steward by themselves in a room underneath; and therefore this seems to be a story contrived between Skeene and Steward.

We shall shew it could not be possible for them to converse together, for Skeene and Steward were locked up in their room; Neynoe was locked up in his room separate and apart from theirs; so that they could never have correspondence with him, nor come near him.

Another thing is sworn by one of them, about a message sent to him by Neynoe, and a paper, while they were in custody of the messenger; and he says, this paper was brought to him by the messenger's maid from Neynoe, and that this paper contained a justification of my lord Orrery, expressing that he knew nothing of my lord Orrery, but what he had said of him was utterly false; that the messenger finding he had some paper, he, to conceal this paper, burnt it. But that the maid came to him with such a message or paper is false; the maid never did, nor did the messenger know of the paper, as we shall prove to your lordships.

My lords, when we have proved this, we humbly apprehend we have taken off any credit that could be given to what these people have said, if they have said any thing material. My lords, before I leave this head, I beg leave to observe another thing as to Skeene. He, upon his examination concerning a discourse with Pancier, denies it entirely; but says, that what Pancier hath informed in relation to him, is false. We shall call Pancier, who will inform your lordships, that Skeene hath owned that he was privy to this conspiracy, and knew who were concerned in it.

I own there are several noble persons named to be concerned; that there is no reason to say, from what Skeene may have said of them, that they are guilty: but such as he may have used the names of great persons designedly, to keep up the spirit of their party, by telling them such and such persons were concerned: and if there is no other evidence but what such a person hath said, the noble persons mentioned will not be affected by it.

My lords, there is another head I shall beg leave to mention, and what they have insisted upon under this supposition; that they would have it taken that there was a design to forge letters, in order to charge my lord bishop of Rochester, and several other persons. Say they, it was easy to get information of such circumstances relating to the Bishop and his family as are mentioned in the intercepted letters, and then to write such letters with a design falsely to charge the Bishop with having been concerned in carrying on a treasonable correspondence. Your lordships will please to consider who this charge must fall upon, of forging the letters of the 20th of April, or the letters that shew Jones and Illington to be the bishop of Rochester.

My lords, we have proved them all to be Mr. Kelly's own handwriting, or letters that have come in answer to them. They have objected we have not given sufficient proof of Kelly's hand: say they, it is proved by clerks of the post-office, who never had compared one original letter with another; but at last they stop an original letter, dated the 20th of August, after the correspondence had been carried on several months; and then come and swear that the original letters that were forwarded, were of the same handwriting with that of the 20th of August. Can this be looked upon as sufficient proof? But we submit it; their evidence is much stronger than if they had only compared one letter with another, for they not only had these letters come every week, but they were employed every time these letters came, to copy them; so that the handwriting of these letters must, by the constant stopping of these letters, and their copying of them, be so imprinted on their memory, that they are much better judges of the hand, than if they had two of these letters to have only compared them together. And the handwriting was so well known to them, that they could, as they have informed your lordships, when any of these letters came, distinguish them by the handwriting of the superscriptions, before they had opened

them, and they never were mistaken. And this, we humbly apprehend, is as satisfactory an evidence as can be given, that these letters were the handwriting of Mr. Kelly, provided the letter of the 20th of August, which I shall take notice of by and bye, is sufficiently proved to be of his handwriting.

Taking it then, my lords, that these letters are the handwriting of Mr. Kelly, and of his correspondents in answer to them, I don't find that my lord bishop of Rochester hath charged Mr. Kelly with having any malice to him. And if he had no malice to the bishop of Rochester, what should induce him to write those letters, on purpose to charge the bishop of Rochester with being concerned in this conspiracy?

My lords, we humbly apprehend the pretence of these letters being forged, must insinuate, that Kelly, a vile fellow, intending to charge the bishop of Rochester with being concerned in this conspiracy, and make him liable to forfeit every thing that was dear to him, hath contrived letters containing circumstances, in order to fix him to be the person denoted by the names of Jones and Illington: he hath written letters, and by combination received others in answer to them, for this purpose: and by these wicked and malicious practices, hath furnished this evidence against the Bishop, who is an innocent man.

My lords, this is the substance of the defence on this head; and whether your lordships will believe this, we must submit to your lordships. Your lordships have had Kelly before you, and by his behaviour have had no reason to think that he had any malice against my lord bishop of Rochester, or any design or intention to prejudice him.

My lords, the next part of the evidence I shall beg leave to observe, is a part very considerable, and is so far from being a defence, that the defence attempted, hath confirmed and strengthened the evidence against my lord bishop of Rochester; that is, with relation to the letter taken among my Lord Bishop's papers, directed to Dubois; a letter which, they observe, don't contain any treason, or is of any treasonable import; but it seems to be a letter of indifference, and, I believe, as such, it was not taken care to be destroyed, as it would have been, had there been any apprehension that use would have been made of it, as now, against the bishop of Rochester.

My lords, the use we make of it is, to shew that Mr. Johnson, or Mr. Kelly, was a person employed by my lord bishop of Rochester in writing letters for him. My lords, your lordships will observe by the letter, he says, "I have heard nothing from you since the letter I had about two months ago by Mr. Johnson; to which I immediately in his hand returned my answer."

My lords, if this is the bishop of Rochester's letter, either in his own hand, or his letter writ by another person, it plainly proves what we infer from it, that Johnson, i. e. Kelly writ for the Bishop. Your lordships will observe, it is a letter writ in a hand which no man writes, a stiff hand almost like print; and it is plain that it is writ to disguise the hand of the writer, whoever he was. At the latter end of the letter, when the person that writ it comes to be tired and off of his guard, there are several letters which, compared with the writing of my lord bishop of Rochester, and what is owned to be his, appear to be his writing. In the date of the letter, which is December, the D you frequently find in the Bishop's handwriting; your lordships observe the letter E, that frequently occurs in the Bishop's writing; and your lordships, by comparing that with the letter produced, will find that they exactly agree.

Whether or no your lordships won't think it, on those circumstances, to be the writing of my lord bishop of Rochester in a disguised hand, we must submit to your lordships. But, my lords, suppose it was not his handwriting, here is evidence that it was his letter; and that is evident, because it is under his seal, it is sealed with his own seal, a seal that he had in his custody, and made use of no longer ago than the 26th of February last: I think that is the day a letter was taken from his servant. That, we humbly apprehend, my lords, will plainly shew it is the Bishop's letter, because it was sealed with his seal, and the same seal is made use of by the Bishop, on the letter that was taken upon his servant in February last.

My lords, this matter hath been controverted by my Lord Bishop. He hath called engravers, who believe seals may be counterfeited, and impressions may be taken off the wax, and another impression made, so as to make it difficult to know which is which. They were a little loose in answering the question, Whether or no, if the seal from whence the impression was to be taken, was broken in the middle, it could be done? But one said, the seal might be mended, and it might pass unobserved: but I find it is extremely difficult. But they did say, seals may be so counterfeited, that it may be difficult to discover one from the other. My lords, this is to insinuate, that after such time as the letter was taken upon my Lord Bishop's servant, the person in whose custody this other letter of Dubois was (which is proved to have been taken the 24th of Aug. amongst the Bishop's papers) hath caused an impression to be taken off the seal with which the letter to Dubois was sealed, (the wax broken in two as it was) in order to fix it upon the letter that was taken upon my Lord Bishop's servant, so as to prove the letter to Dubois to be the Bishop's letter. Who is this to be fixed upon? Neynoe was gone; I don't know, unless upon the committee of the House of Commons: for the Bishop's letter was taken on his servant the 26th of February; the committee of the House of Commons made their Report on the first of March, and the letter to Dubois had, long before the 26th of February, been in custody of that committee. And yet while this letter is in

custody of a committee of the House of Commons, they will have it, here is an impression taken off a broken seal, and put on this other letter, in order to shew that these are letters of the same person. Who can believe this to be the case?

An observation hath been made, that truly the committee of the House of Commons have not made any observation of this kind, with relation to this letter to Dubois, that it is the Bishop's letter: which is true; for they had not this matter relating to the identity of the seals under their consideration; but this is a new discovery made since: and therefore, my lords, they apprehended that this was a letter directed to the Bishop by the name of Dubois, it being found amongst his papers, and nothing to the contrary did appear, till after they had made their Report.

My lords, there are other things your lordships would have expected to have had an account of, in answer to this evidence. Here is a letter found among my Lord Bishop's papers; consequently, so far we apprehend that this evidence is a legal evidence against the Bishop, as being a letter found in his custody; this letter is directed to Dubois, and mentions the hand of Johnson. Doth my lord bishop of Rochester give any account who Dubois is? who this Johnson is? how this letter came there? No, my lords, none at all. Doth his lordship give you any account of the seal? and hath his lordship said that the seal, that sealed the letter taken on his servant, he hath not? or that the letter was not sealed with his seal, or that he did not seal it himself? His lordship did not say one word to that purpose, or make any denial of the matter, nor give your lordships any account who Dubois and Johnson were; nothing at all, but hath left it to your lordships on that foot: that the letter to Dubois had an impression taken off, after it was in the custody of the committee of the House of Commons, and that impression made use of on the other letter: and that this is another part of the contrivance, in order to charge my lord bishop of Rochester with being concerned in this conspiracy.

My lords, as to the seal's being the same on the two letters, we humbly apprehend, the evidence given on the other side hath strengthened ours. We have produced two engravers, one of them they own to be the top engraver of England, Mr. Christian; he gave your lordships an account, that he verily believed these two impressions to be taken off from the same seal. Mr. Rolles said the same thing, and that he had used the art long, and could judge. They made no endeavours on the other side to try the skill of Mr. Christian: but as to Mr. Rolles, they hoped they should be able to puzzle him; and therefore have produced six several impressions made on wax by seals to try his art; and after he had looked upon them, he gives you such an account, that, I believe, your lordships are satisfied that he is a man of skill and art: and that if these impressions had been taken off, as they would insinuate they were, he must have discovered it.

My lords, here is an artist brought to make this experiment on Rolles, to try his skill; yet, notwithstanding all the art hath been made use of in the case, that could be, the man was able not only to distinguish how many seals the impressions were made with, but also to give an account that they were cast seals, and not graved seals, that made those impressions.

This, my lords, will have such a weight with your lordships, that we hope your lordships will believe his evidence is true; and if it is true, what answer hath been given it your lordships have heard. Whether, therefore, any satisfactory answer hath been given to an evidence so strong and convincing of Johnson's being employed in writing letters for the bishop of Rochester, we must submit to your lordships.

My lords, the next evidence they went upon was in relation to the dog. Say they, we will shew that this dog was not for the bishop of Rochester, or any other person but Mrs. Barnes. As to that, my lords, I beg leave to remind your lordships of the evidence given by Mrs. Barnes, that Mr. Kelly told her it was for the bishop of Rochester. It is a little improbable, if the dog had been for Mrs. Barnes, that he should come and deliver it to her, and tell her it is for the bishop of Rochester. But it appears by Mrs. Barnes, that another dog was designed for her, and that this dog was for the bishop of Rochester. They have read in evidence a certificate, signed by Mr. Birmingham, and likewise an affidavit, that there was, in the month of March, a dog delivered to Kelly in France for Mrs. Barnes. That, my lords, must be another dog, and not this, which we say was for the bishop of Rochester; for this was not delivered to Mr. Kelly in France, but was sent over to him after he was in England, as appears by the letters; and after he had received it, he writes, that "he would inform Mr. Jones soon of it, to whom any thing from that quarter would be very acceptable." So that, my lords, if there was another dog, and by Mr. Kelly designed for Mrs. Barnes, we humbly apprehend it cannot be applied to this; for this dog was designed for Mr. Jones, and Mrs. Barnes says, that is the bishop of Rochester.

My lords, the next evidence given by them is in relation to the letters of the 20th of April. They have endeavoured to prove that, as to my lord bishop of Rochester, it is impossible that these letters could be written or dictated by him. He came to town the 11th, and went to Bromley again the 12th of April; he had a fit of the gout soon after; had servants that constantly attended him, more than one; and these servants give an account, that no person whatsoever came near him, or could be employed by him to write those letters.

My lords, I beg leave to observe, first, that as to the applying their evidence to the writing of those letters on the 20th of April, it is very

possible that the letters were writ on another day than when they bear date: therefore if they prove, that it was impossible that these letters should be writ or dictated by the bishop of Rochester on the day they bear date, yet they might be writ on another day, and it is very probable they were.

Your lordships will observe, that these letters are in cyphers; and, I believe, where a person dictates a letter to another, he doth not reduce the letter into cyphers as it is dictated, but he first writes it out in words at length, and afterwards puts it into cyphers, and when it is proper to send it, then is the time to date it; and if it be left with the person that puts it into cyphers to send, as probably it was in this case, it is left to him to date it when he pleaseth: so that if they should have shewn, that upon the 20th of April the Bishop was incapable of dictating or writing, it is no conclusive answer to the charge against the Bishop as to these letters.

Your lordships will please to observe, that upon the 11th of April the bishop of Rochester came to town, on the 12th he went into the country; notwithstanding what they have attempted to prove as to the times that Kelly was in town, and the Bishop was in the country, yet upon the 11th and 12th they were both in town; for Kelly came to town from France, the 11th, and the Bishop came to town the 11th from Bromley.

When the servants came to be examined, what time of the day the Bishop came to town on the 11th, they could not give any account of that: when they were asked, what time of day it was when he went out of town on the 12th, they could give no account of that.

There hath been no account given to your lordships who was with the bishop of Rochester the 11th and 12th when he was in town, or where my Lord Bishop was at that time: so that, my lords, it is possible, from these circumstances, that these letters might be writ when the Bishop was in town, and Kelly was in town.

But suppose it should not be so; the question is, whether they could not be writ at Bromley? On the 12th of April Mr. Kelly was at Mrs. Barnes's, he did not lie at home that night, on the 13th he did not lie at home; on the 14th he came, and went to his old lodgings at Mrs. Kilbourne's. These two nights it doth not appear where he was; he might have been at Bromley, it is but an hour's ride. As to the servants, say they, they should have remembered his setting up his horse: he might set up his horse at an inn, and go privately to my Lord Bishop.

Notwithstanding my Lord Bishop was ill, and though he should have proved to your lordships' satisfaction, that after he was so, he did not, nor could admit of company, yet we submit it to your lordships that it is no answer; for he was not very bad till he had been in the country two or three days, and these letters might be dictated or written in those two or three days before he was so ill.

My lords, I beg leave to observe, what the servants have sworn. Here is Grant, that is my lord's butler, he says, that my Lord Bishop went the 12th of April to Bromley, and he attended him there till the 21st, and on the 21st he was sent to town upon some matters relating to the Westminster election; and another servant about him gives an account, that two or three days after my Lord Bishop came down, he was taken so ill in his hands and feet, as not to be able to help himself. These are two or three days beyond the time that Kelly was out of his lodging, which was the 12th and 13th, (and these two or three days must be the 14th and 15th) it may be my Lord Bishop was so disabled indeed as he says; he says he is almost certain that no stranger was with the Bishop; but he says the apothecary or the minister might be with him in his illness, though he did not see them himself. If it is possible for the apothecary or the minister to be with him, and he not see them, why is it not as possible that Mr. Kelly might be there, and he not see him there?

The next witness that is called only speaks to the 18th and 19th; when Grant came to the election, another servant was sent for, and he went, and he says my Lord Bishop was very ill. Samuel Steele gives an account of my Lord Bishop's illness, and his attending him.

My lords, they have brought all the servants of the house, the very stable-boy, to prove that my Lord Bishop could not see any body without their knowledge; even the nurse that attended his lady when she was dying. The servants that were waiting upon his lady swear, that it was impossible any body should come to my Lord Bishop, and they not know it; and they are as positive, in relation to any body's coming to my Lord Bishop, as the servants that immediately attended him.

But, my lords, there is a matter, which we shall offer in evidence, that entirely destroys this evidence of my Lord Bishop's being so ill, that he could not move hand or foot, and of his not being in a capacity of dictating letters: That he did actually send a letter the 21st of April to a person in town; and this very Grant, that hath given this account to your lordships, brought up the letter to town on the 21st of of April. We have this to give your lordships in evidence; then what is the evidence of all these servants, who swear that it is impossible these letters should be writ on the 20th of April; and that nobody was admitted to come to him in order to write these letters?

My lords, as to the evidence that hath been given, in relation to Kelly's hand-writing, they have called witnesses to disprove the evidence on our side, who looking upon the letter of the 20th of August, swear they do not believe it to be Kelly's hand-writing. Our witnesses do believe it; their witnesses do not believe it to be his hand-writing, and say that it is not like it.

There are several letters shewn them; though in a less hand, that are agreed to be Kelly's hand-writing; and your lordships may

judge, by looking on them, whether they are not of the same hand with the letter of the 20th of August; though the character is something less, we humbly apprehend they will appear so to be. Besides, there are those circumstances relating to the hand writing of Mr. Kelly, that put it beyond all dispute that it is his hand, and that is the answers he hath received to those letters which we charge to be written by him. We have traced him from place to place, where the letters that came in answer to his letters, were directed; to Mr. Andrews at the Dog and Duck, there Kelly employed a person to take them up, and they were delivered to him; and at Burton's coffee-house Kelly took up the letters that were directed thither, in answer to those letters that were of his handwrtiing. So there is not only the evidence of witnesses that knew his hand, and believe it to be his hand, but here are the answers to them actually taken up by Kelly himself: and that, we humbly apprehend, is so strong an evidence, joined with the other, that, when one or two witnesses come and say they do not believe it to be his hand-writing, their testimony shall not overthrow it.

My lords, there is another piece of evidence given by them, relating to the letters of the 20th of April, which were enclosed in a packet sent to Boulogne; the packet is directed to Mr. Alexander Gordon, banker, at Boulogne: they have produced a certificate from Boulogne upon oath, wherein it is said, that he is no banker, and denies that he received any packet from Kelly, or that he knew him: This is a certificate, and proved by a person who believes it to be so. Your lordships will please to observe what this paper is, and that it is brought here by a person that knows nothing of its being sworn, but says, he is used to transactions of this kind, and he believes it to be a certificate from Boulogne.

My lords, we shall produce a gentleman, who was at Boulogne at the time that the printed Report and Appendix of the House of Commons came there, and he was at Mr. Gordon's house when they were discoursing about this matter; and what they then said, we humbly submit will be believed; for what they then said was spoken as of an indifferent thing, and they did not then see it could be of any consequence to disguise the truth. Mr. William Gordon the father said, that he was at Paris when this packet is supposed to have come: But Mr. Alexander Gordon the son owned that he was at home, and that this packet came to him; but, said he, what was in it I know not, but I delivered it as is mentioned in the Appendix.

My lords, there is another piece of evidence they have given with relation to James Talbot, to whom the packet was delivered at Boulogne. Here is a witness produced to prove that he was in town the 29th of April, 1722, and he could not be mistaken, because he had paid him money, and he had entered it in his book. The evidence goes no farther than to prove, that one James Talbot, that was a tall black man, was then in town; but it doth not appear that this was the person mentioned to have taken this packet at Boulogne, and carried it to Paris: So that their proof, as to this matter, is insufficient.

But we shall shew your lordships, from an account we have here from Mr. Crawford, his majesty's resident at Paris, that this James Talbot came to Paris that very day, as he is mentioned to have brought those letters to Paris, and was actually there at that time: add that we humbly apprehend will be a full answer to them, and take away any ground of supposition, that the evidence they have given concerning James Talbot, can be applied to that James Talbot who received the packet at Boulogne.

As to the evidence relating to Mr. Kelly's being in town the 20th of April, we humbly apprehend, from what hath been said, it is not material whether he was there or not; but they have not proved it; for Mrs. Kilbourne and her maid, the two witnesses produced by them for this purpose, say, that he came to Mrs. Kilbourne's house the latter end of April, they believe the 20th, but they are not positive as to the day. If he had been at Mrs. Kilbourne's the 20th of April, it is no answer at all to our evidence, and the strong circumstances there are to induce a belief, that the the letters might be dated at another time than really they were written.

My lords, another evidence is Mr. Pope, a gentleman of learning, with whom my lord bishop of Rochester used to converse; and he gives you an account that he knew nothing of this conspiracy; that the Bishop never opened his mouth to him about it, nor acquainted him with it; that he was frequently with him, and their discourse was only about matters of literature.

No doubt my Lord Bishop hath conversed with persons on different subjects, to whom he would communicate nothing of an affair of this nature.

My lords, upon the whole matter we must submit it to your lordships, whether we have not made out the charge against my lord bishop of Rochester to your lordships' satisfaction; if not by legal evidence yet by evidence that will satisfy and convince any person that will consider it.

My lords, a great deal of regard is due to the character and function of the reverend prelate at the bar: but if my lord bishop of Rochester hath departed from his character and function, and hath gone and engaged in a traitorous conspiracy, and been guilty of treason towards his king, and perjury towards his God, we humbly apprehend, if this be proved, that his character and function are so far from being a mitigation, that they are a great aggravation of his crime.

We shall submit it to your lordships, to do what your lordships think is consistent with justice and equity.

Then the counsel for the Bill examined farther evidence.

After which the Bishop's counsel were heard in answer to that evidence, and also examined evidence. And the Bishop himself was heard as to the new matter this day offered.

Then Mr. *Wearg* was heard in reply as follows:

My lords;—It must be admitted, that the reverend prelate at the bar, has made his defence with the utmost force and beauty of eloquence.

Was I capable of answering it in the like manner, which I own I am not, yet I should not think myself at liberty to do it, under the present circumstances.

For though it may be excusable, in a person upon his defence, to make use of that powerful instrument of error and deceit, which always imposes upon the reason, and misguides the judgment in proportion as it affects the passions; yet I cannot think the same methods justifiable in a person employed to carry on the prosecution.

I shall therefore examine the force of what has been offered on behalf of the reverend prelate, stripped of the ornaments and colours of rhetoric.

I shall, in the first place, consider that catalogue of hardships, which his lordship has complained of.

1. The first complaint was that of severities and indignities offered him during his confinement: but the subject of this complaint not arising from any of the proceedings before your lordships, I can give it no other answer, than by saying, that I am very credibly informed it is a complaint without foundation.

2. Reading extracts of letters was the next hardship complained of by his lordship, and represented as if they were read as evidence against him; when it was declared by the counsel for the Bill, that they were only read upon the general part of the Bill, and did not affect his lordship.

3. The third hardship was, excusing the decypherers from answering such questions proposed by his lordship, as tended to a discovery of their art; that is, in other words, refusing to do an act which must prejudice another person, and could be of no service to his lordship: for the truth of what they testified, depended upon the skill and integrity of the decypherers, and not upon the method of coming at that skill, which they could not disclose in so public a manner, without doing a manifest prejudice to themselves, which no witness is ever compelled to do.

4. The next hardship is of the like nature, the not suffering the clerks of the post-office to be examined, as to the method and authority by which they opened letters, by which they might have been subjected to the severe penalties of the statute 9 Anne, if they had not exactly pursued the methods prescribed by that statute. But his lordship's innocence could not possibly have been manifested by it; for are the letters less criminal, if the person who stopped them did not punctually pursue the directions of that statute? It would be thought a strange defence in a common offender, if, instead of proving his innocence at his trial, he should object that he was taken without a proper warrant; which, if true, don't make him the less criminal.

5. The fifth hardship was refusing to let Mr. Lewis declare any thing that came to his knowledge by his being employed in the secretaries office some years ago. This hardship could be added only to fill up the catalogue of complaints, since, notwithstanding your lordships' order, Mr. Lewis did declare what he was called for, though he afterwards owned, that he came to the knowledge of it by being employed in that office.

6. The sixth hardship was in reading an examination not dated, signed, or sworn. But I apprehend the counsel for the Bill have more reason to complain of hardships of this sort, in reading papers on behalf of his lordship as examinations signed and sworn, without ever proving that they were signed or sworn to, or that any such persons were ever examined; whereas the examination hinted at in the Bishop's complaint, was read as an examination, or rather confession of a person since dead, not signed nor sworn to, and fairly left to your lordships, to have such weight as the nature of the evidence deserved.

7. The next hardship, viz. that of reading letters wrote by another person, without proof that they were wrote with the prelate's privity, is begging the question upon the whole proceeding. For whether there was proof of their being wrote with his privity or not, is the subject of the present enquiry.

8, 9. The two last hardships complained of, seem to be calculated for persons without doors, who are strangers to what passed at your lordships' bar, that he was denied a copy of the letters in cypher, until the trial was so far advanced that he could not make the proper use of those copies. Will any one who reads this complaint in his lordship's speech imagine, that after he had a copy of those letters, he had twice as much time for his decypherers to peruse them as he himself desired?

Or will a person who shall read the next complaint in his lordship's speech, that he was refused to read any of the papers contained in the trunk that had not been read by the counsel for the Bill, ever be persuaded that his lordship read the three first examinations of Neynoe, that had not been read by the counsel, the papers taken in Neynoe's pocket, the certificate of the surgeon returned by Mr. Crawford, neither of which had been read by the counsel for the Bill; that his lordship was expressly told, he was at liberty to read any paper in the trunk he should think necessary to his defence; and was only refused reading one paper, because he owned it was for no other purpose but to raise an objection to a matter

which had not been insisted on by the counsel for the Bill, that he might answer the objection which he himself should raise.

These things will seem incredible to one who shall read this catalogue of complaints in his lordship's speech; and yet these are some of those complaints, which, with the assistance of a warm and masterly style, drew tears from some of your lordships' eyes:

But when stripped of that false beauty, and examined by the sure and unerring rules of reason, appear to be without foundation; and to have been made without that strict regard to truth, which, I presume by some part of his lordship's speech, he would be thought always to have.

From these complaints his lordship proceeds to support some of the objections taken by his counsel to the Bill.

And one of the first objections is of the same nature with some of the hardships that have been complained of; that is, it might be an objection, did it not want the foundation of truth.

The objection I mean is, that it is a Bill *ex post facto*: your lordships have heard a great deal said upon the hardships of Bills *ex post facto*.

We have been called upon to shew against what law he has offended: it has been said, if he has not offended against any law, will you make a law in his case, which will not be a law in the case of any other man? This is a surprizing objection.

The notion I always had of a law *ex post facto* was, where a fact was made criminal by a law, which was not so at the time that fact was committed.

But is that the present case? Was it no offence, before this Bill was brought in, to correspond with the Pretender and his agents, in order to subvert our constitution?

Are we to be called upon to shew against what law this is an offence?

Or to have a complaint made, that in punishing a man for such an offence, you are making a law in his case, that will not be a law in the case of any other person?

I hope it will be a law in the case of every man that equally deserves it.

But his lordship is sensible of this answer, and therefore gives it a very artful turn, by applying it, not to the fact, but to the evidence. His lordship seems to argue, that accumulative evidence is as unreasonable as accumulative treason; and objects that proofs which communicate light and strength to each other, have only the formality, without the force of evidence.

This objection is destructive of all proof that is not mathematical; for all other proof must necessarily be what he calls accumulative.

That is, it consists of a variety of facts and circumstances laid together, sufficient to induce a belief, which any of them singly would not do. This is the very principle upon which the trial of every matter of fact, not capable of a demonstration, does and must proceed.

Your lordships, in the next place, have heard a string of objections that have been repeated against each of the Bills.

That a subject of England ought to be tried according to the laws of England and Magna Charta:

To be convicted by legal evidence:

And that distinction between legal and parliamentary evidence is absurd.

All these positions I agree to;

But at the same time I must affirm, that this is a trial agreeable to the laws of England and Magna Charta; and that a proceeding of this nature is as necessary a part of our constitution, as the establishment of the ordinary courts in Westminster-hall.

The difference between parliamentary and legal evidence, taken in the general sense of the word, legal, is improper.

And I affirm the evidence, which has been offered in support of this Bill, is legal evidence.

What is legal evidence, depends upon the nature of the enquiry, and the judicature before which the enquiry is made.

Depositions in writing are not legal evidence in a court of law, but they are legal evidence in a court of equity.

Upon an indictment for felony, or any other misdemeanor, one single positive witness, or circumstances only without any positive witness to the fact, is legal evidence.

But upon an indictment for treason, the law requiring two witnesses in the courts below, one witness, or circumstances, is not legal evidence.

In parliamentary enquiries, which are excepted out of that act and not restrained by any other, every thing is legal evidence which may properly tend to a discovery of the truth.

I cannot think myself at liberty at this time of day, to mention what fell from the other side, against the power of the parliament in general, and the rather, because the next objection which they relied upon was introduced with an admission of that power.

But they say it ought never to be exercised but in cases of necessity; and instance particularly in the Bill against the South-Sea directors, as a case of that nature. Is there any comparison between the offence of those men, and of one who has endeavoured to subvert our whole constitution, to destroy our religion, our liberty, and every thing that is valuable?

When we reflect that these endeavours have been constantly carrying on ever since the happy establishment of the Protestant Succession;

That the many discoveries of their plots, the many examples of public justice, have had no other effect, than to make them more subtle and cunning how to avoid the common forms of the law:

These reflections shew the necessity of such a proceeding, to convince the world, according to your lordships' Report, that an artifice and

disguise don't lessen the danger to the public, nor mitigate the guilt of the offender, so neither ought they to protect him from punishment.

The next objection was addressed chiefly to one part of your lordships, who were told that no civil power upon earth could deprive a bishop of the exercise of his holy function, but that must be done by another judicature; and therefore it was observed by one of the counsel, that wherever issue is joined in the common law courts, whether bishop or no, the Court where such issue is depending, must write to the metropolitan to try it, according to the law of the Church.

Whether an act of parliament can deprive a bishop, so as to make the acts done by him afterwards invalid, is a controversy not proper at this time; but it will be admitted on all hands, that an act of parliament may restrain a bishop from the exercise of his function within any part of this kingdom, so as to make the exercise of it criminal in him, or in any that assists him. And I believe if this Bill should pass into a law, and there should be a question, whether his lordship was afterwards bishop of Rochester? The courts of law, upon producing the act of parliament, would hardly think it necessary to trouble the metropolitan.

His lordship has been pleased to say, that this is the first instance where a member of this House has been judged in another.

I wonder that his lordship, who is so great a master of our English constitution, should have forgot the case of one of his predecessors in the see of Rochester,* in the reign of Henry 8, against whom a Bill was brought in the House of Commons, inflicting severe pains and penalties, which passed in that House, and afterwards received the approbation of this, and the royal assent.

They have closed their objections to the Bill, with a very pathetic admonition against the consequences of it.

They say the wisest man cannot foresee, nor the most innocent man declare himself safe from, the consequences of this Bill.

That a wise man should not be able to foresee what will happen hereafter is not very strange.

But he must be a very wise man indeed, in my poor opinion, who can foresee any danger to innocence from the proceedings upon this Bill. Your lordships have attended with the utmost patience, for seven days together, to the proofs for and against this Bill; and have given the person accused all the opportunities, afforded him all the assistance possible to make out his innocence.

And whoever shall use this precedent as a handle for oppression and injustice, would certainly be guilty of the same oppression and injustice without this precedent.

The next part of their defence consisted in observations upon the evidence for the Bill.

They raise great triumph from Neynoe's examination, which they would represent as the foundation of the whole charge, or offered as such by the counsel for the Bill.

But if it was, they have been so far from weakening, that they have added strength to that foundation.

As to the inconsistencies in it, they are not Neynoe's but Kelly's. As to the tale they have told, that at the very time when he was deluding a great man with confessions, either to get money out of him, or to find an opportunity of making his escape, he should declare to Skeene and to Steward that what he had confessed was false; I say, as this is improbable in itself, so it appears by our evidence to be a mere fiction of their own, without any possibility of being true.

It appears to be an attempt, by a parcel of desperate people engaged in the same interest, to weaken Neynoe's evidence, whom they looked upon as a betrayer of their cause and party.

From the evidence of Neynoe they proceed to the other evidence.

And here they tell your lordships that we have supported the Bill by innuendoes, arbitrary and invidious interpretations; that when a woman is named, it means a man; that two different names signify the same person; that books of account, and mercantile terms, by a new kind of metaphor, are taken in an ill sense: and all this assisted with the whimsies and conjectures of decypherers.

These are pretty sounding expressions; but, when considered, are nothing but sound.

Is it an arbitrary interpretation, when a letter says, "I saw Mrs. Illington, he is in great tribulation for poor Harelequin, but his obligations are the same, which he desires may be made known;" to apply this to a man? When two letters are wrote by the same person, but signed by different names, to apply those two names to that person?

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They next object to the unreasonableness of applying the circumstances which relate to Jones and Illington to the bishop of Rochester.

Was nobody else besides the Bishop out of town? Was he the only man that had the gout, or who lost his lady at that time?

Were these questions to be asked singly, they might be answered, that there were other persons in the like circumstances.

* Fisher.

which had not been insisted on by the counsel for the Bill, that he might answer the objection which he himself should raise.

These things will seem incredible to one who shall read this catalogue of complaints in his lordship's speech; and yet these are some of those complaints, which, with the assistance of a warm and masterly style, drew tears from some of your lordships' eyes:

But when stripped of that false beauty, and examined by the sure and unerring rules of reason, appear to be without foundation; and to have been made without that strict regard to truth, which, I presume by some part of his lordship's speech, he would be thought always to have.

From these complaints his lordship proceeds to support some of the objections taken by his counsel to the Bill.

And one of the first objections is of the same nature with some of the hardships that have been complained of; that is, it might be an objection, did it not want the foundation of truth.

The objection I mean is, that it is a Bill *ex post facto:* your lordships have heard a great deal said upon the hardships of Bills *ex post facto.*

We have been called upon to shew against what law he has offended: it has been said, if he has not offended against any law, will you make a law in his case, which will not be a law in the case of any other man? This is a surprizing objection.

The notion I always had of a law *ex post facto* was, where a fact was made criminal by a law, which was not so at the time that fact was committed.

But is that the present case? Was it no offence, before this Bill was brought in, to correspond with the Pretender and his agents, in order to subvert our constitution?

Are we to be called upon to shew against what law this is an offence?

Or to have a complaint made, that in punishing a man for such an offence, you are making a law in his case, that will not be a law in the case of any other person?

I hope it will be a law in the case of every man that equally deserves it.

But his lordship is sensible of this answer, and therefore gives it a very artful turn, by applying it, not to the fact, but to the evidence. His lordship seems to argue, that accumulative evidence is as unreasonable as accumulative treason; and objects that proofs which communicate light and strength to each other, have only the formality, without the force of evidence.

This objection is destructive of all proof that is not mathematical; for all other proof must necessarily be what he calls accumulative.

That is, it consists of a variety of facts and circumstances laid together, sufficient to induce a belief, which any of them singly would not do. This is the very principle upon which the trial of every matter of fact, not capable of a demonstration, does and must proceed.

Your lordships, in the next place, have heard a string of objections that have been repeated against each of the Bills.

That a subject of England ought to be tried according to the laws of England and Magna Charta:

To be convicted by legal evidence:

And that distinction between legal and parliamentary evidence is absurd.

All these positions I agree to;

But at the same time I must affirm, that this is a trial agreeable to the laws of England and Magna Charta; and that a proceeding of this nature is as necessary a part of our constitution, as the establishment of the ordinary courts in Westminster-hall.

The difference between parliamentary and legal evidence, taken in the general sense of the word, legal, is improper.

And I affirm the evidence, which has been offered in support of this Bill, is legal evidence.

What is legal evidence, depends upon the nature of the enquiry, and the judicature before which the enquiry is made.

Depositions in writing are not legal evidence in a court of law, but they are legal evidence in a court of equity.

Upon an indictment for felony, or any other misdemeanor, one single positive witness, or circumstances only without any positive witness to the fact, is legal evidence.

But upon an indictment for treason, the law requiring two witnesses in the courts below, one witness, or circumstances, is not legal evidence.

In parliamentary enquiries, which are excepted out of that act and not restrained by any other, every thing is legal evidence which may properly tend to a discovery of the truth.

I cannot think myself at liberty at this time of day, to mention what fell from the other side, against the power of the parliament in general, and the rather, because the next objection which they relied upon was introduced with an admission of that power.

But they say it ought never to be exercised but in cases of necessity; and instance particularly in the Bill against the South-Sea directors, as a case of that nature. Is there any comparison between the offence of those men, and of one who has endeavoured to subvert our whole constitution, to destroy our religion, our liberty, and every thing that is valuable?

When we reflect that these endeavours have been constantly carrying on ever since the happy establishment of the Protestant Succession;

That the many discoveries of their plots, the many examples of public justice, have had no other effect, than to make them more subtle and cunning how to avoid the common forms of the law:

These reflections shew the necessity of such a proceeding, to convince the world, according to your lordships' Report, that as artifice and

disguise don't lessen the danger to the public, nor mitigate the guilt of the offender, so neither ought they to protect him from punishment.

The next objection was addressed chiefly to one part of your lordships, who were told that no civil power upon earth could deprive a bishop of the exercise of his holy function, but that must be done by another judicature; and therefore it was observed by one of the counsel, that wherever issue is joined in the common law courts, whether bishop or no, the Court where such issue is depending, must write to the metropolitan to try it, according to the law of the Church.

Whether an act of parliament can deprive a bishop, so as to make the acts done by him afterwards invalid, is a controversy not proper at this time; but it will be admitted on all hands, that an act of parliament may restrain a bishop from the exercise of his function within any part of this kingdom, so as to make the exercise of it criminal in him, or in any that assists him. And I believe if this Bill should pass into a law, and there should be a question, whether his lordship was afterwards bishop of Rochester? The courts of law, upon producing the act of parliament, would hardly think it necessary to trouble the metropolitan.

His lordship has been pleased to say, that this is the first instance where a member of this House has been judged in another.

I wonder that his lordship, who is so great a master of our English constitution, should have forgot the case of one of his predecessors in the see of Rochester,* in the reign of Henry 8, against whom a Bill was brought in the House of Commons, inflicting severe pains and penalties, which passed in that House, and afterwards received the approbation of this, and the royal assent.

They have closed their objections to the Bill, with a very pathetic admonition against the consequences of it.

They say the wisest man cannot foresee, nor the most innocent man declare himself safe from, the consequences of this Bill.

That a wise man should not be able to foresee what will happen hereafter is not very strange.

But he must be a very wise man indeed, in my poor opinion, who can foresee any danger to innocence from the proceedings upon this Bill. Your lordships have attended with the utmost patience, for seven days together, to the proofs for and against this Bill; and have given the person accused all the opportunities, afforded him all the assistance possible to make out his innocence.

And whoever shall use this precedent as a handle for oppression and injustice, would certainly be guilty of the same oppression and injustice without this precedent.

The next part of their defence consisted in observations upon the evidence for the Bill.

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But then the answers would be nothing to the purpose.

The only question applicable to the present case would be, Is there no other person who was in town on the 7th of May, out of town on the 10th and 14th, in town on the 15th; whose wife died the week before the 30th of April, he himself then ill of the gout; to whom a dog was sent from France of the name of Harlequin, that broke its leg, and was brought to Mrs. Barnes, by Mr. Kelly, in order to be cured?

These are the circumstances of Jones and Illington, and they are every one proved true of the bishop of Rochester; and I believe your lordships can hardly think they are so of any other person.

They said they should falsify several of these facts; but they have only said it.

In the papers they have produced from the surgeon concerning the dog, he contradicts himself.

In the first he says, he gave Mr. Kelly a dog for his own use, to dispose of as he pleased;

In the second he says, he gave it for Mrs. Barnes.

But Mrs. Barnes tells you, that the dog designed for the Bishop was in her custody, when the other given by the surgeon was expected over.

Their attempt to disprove the circumstances of being in town, has met with as little success.

In a letter of the 7th of May, it is said Mr. Illington is come to town for a day only.

We shewed that the Bishop was in town upon that day; they answer us by saying, he staid in town two days after.

Does this disprove his being in town upon the seventh? or does it weaken the proof of his being then in town, because he altered his mind, and staid two days longer than perhaps he at first intended?

This is the only attempt they made to disprove any of the circumstances relating to Mr. Jones and Illington. As to the other instances which they pretend to disprove, they relate to Weston and Rig, and were not mentioned by the counsel for the Bill.

They next object to the method of proving the similitude of hands, and observe, that the original letter proved to be Mr. Kelly's, and the three letters applied to the bishop of Rochester, are dated at four months distance; and how is it possible, that the clerks of the post-office should be able to swear upon their memories that they are of the same hand-writing?

This is not a fair representation of the evidence: For the clerks told your lordships that there was not any one post during all that time, which did not bring some letter in the same hand, all which they copied, and had by that means contracted a perfect idea of the hand; so that they did not swear from memory, but from a knowledge gained by experience, and many constant repeated observations upon the same hand.

There have been some other objections made that are scarce worth taking notice of.

It is said Mrs. Illington is in great tribulation for poor Harlequin, which Kelly could never say of the bishop of Rochester.

Surely there is nothing in this;

It is an expression that might be used of a man of the gravest character in a letter of this sort, to the author of such a present.

Mrs. Illington is mentioned eleven days after the Bishop's lady was dead. This is the instance where it is said Mrs. Illington is in great tribulation for poor Harlequin, but his obligation is the same, which he desires may be made known.

That Jones is mentioned in other cyphers for other persons, as in one for the duke of Norfolk, in Plunkett's for a different person.

But does it therefore follow that in Kelly's he cannot mean the bishop of Rochester?

It certainly does not.

And they seem to be convinced that the Bishop is too well described in this correspondence, under the names of Jones and Illington, to doubt whether he is meant by them.

And therefore they endeavour to give it another turn, by saying this may be a malicious contrivance of some persons, who have informed themselves of his lordship's motions, and the circumstances of himself and family: and to make this the more probable, they say that Jones and Illington are the only persons mentioned in this correspondence of Mr. Kelly's, with circumstances of this nature.

One would not imagine the persons who made this objection, had so often heard the letters read.

E. 41. It is said, Hore is laid up with his old distemper, Hobbert is pretty well recovered.

E. 45. Mr. Hore is laid up, and so is Jemison, with the gout.

E. 49. Rep. is said to be in the country.

E. 59. Ho. and Den. are said to be gone into the country.

E. 62. Nic. W. is now in town, he is well as to health.

E. 64. Trotter is said to be out of town the next morning.

E. 69. Den. is said to come to town, Rep. and Ho. to be in the country.

E. 73. C. Saunders is well, and with a friend in the country.

These are all instances where the same circumstances are mentioned of other persons, that are mentioned of Jones and Illington.

If Jones and Illington are oftenest mentioned, it is because he was the principal person in this correspondence.

But this malicious contrivance must be carried on by Mr. Kelly: for

It has been proved that the letters were wrote in his hand, that the answers were addressed according to his directions;

That he received the letters so directed.

I believe your lordships have no suspicion that Mr. Kelly bore an ill-will towards the Bishop:

I am sure there has been no proof of it, nor of any malicious contrivance against him.

But, my lords, this is the common trite excuse of every petty offender.

Your lordships can scarce read a trial, where the defendant don't complain that it is all a malicious contrivance of his enemies.

I heard this very thing warmly insisted upon a few terms ago, at another bar, and with as much proof, by a person concerned in a part of this conspiracy, who has since been attainted and owned his guilt.

But we have gone still further, we have shewn that Kelly was an acquaintance of the bishop of Rochester's.

Which is indeed acknowledged, without any satisfactory account given for what purpose his lordship should contract an acquaintance with a young fellow that has deserted his orders, and is a professed non-juror.

Your lordships, I presume, from the behaviour of Mr. Kelly, can hardly be persuaded that he had no other employment under the Bishop than to furnish him with beaver stockings, which the Bishop owns to have received from him as a present.

But we have proved by the strongest evidence that can be, by a letter under his lordship's seal, and I may venture to say (from the observations that have been made from the letter itself) under his hand, that Johnson, i. e. Kelly, is the person in whose hand the Bishop returns his answers. No account is given of this letter, by whom it was wrote, nor to whom, nor how it came among his lordship's papers.

All that is said in answer to it is, that it is possible seals may be counterfeited, or there may be several impressions of the same seals: but is there any proof of it?

It appears that the impression on the first letter was broke when seized; that it was in the hands of the committee of the House of Commons before the second letter was taken; which makes it impossible to imagine an impression should be taken off the first to put upon the second.

But his lordship is pleased to ask, is it agreeable to the cunning with which he is charged, to keep such a letter by him on purpose, as it were, to furnish his adversaries with evidence?

No, my lords, neither do I imagine his lordship knew he had it by him.

It was found amongst his papers, and, no doubt of it, was left there accidentally; and it is by such little accidents that the most cunning men are detected; there is no danger of their committing greater oversights.

His lordship is pleased to observe, that at first the House of Commons represented this letter as a letter wrote to him; but now it is discovered to be wrote by him: it is so, and very plainly, and his lordship may thank himself for the discovery; and the not discovering it sooner is surely no objection to the truth of it when discovered.

It may be urged, and has been insinuated, that if Mr. Johnson is the person in whose hand the Bishop returns his answers, yet how does it appear that these particular letters which are applied to the Bishop, were wrote by his directions?

If it appears that Johnson is the person in whose hand he writes, and that these letters are of the hand-writing of Johnson, signed by that name, which denotes the Bishop in the correspondence, this will be thought a reasonable proof that they were wrote with his privity.

But they said they should prove it impossible that these three letters should be wrote with the privity of the Bishop; for they bear date the 20th of April, whereas the Bishop came to town the 11th, went to Bromley the 12th, and within two or three days after was taken so ill with the gout, that he had neither the use of his hands nor feet, and had a servant always attending him, who will prove that no stranger came near him all that time.

If this had been made out, it would not be a proof that the letters were not dictated by him; for both Kelly and the Bishop were in town upon the 11th and 12th, and the Bishop was not confined at Bromley upon the 13th and 14th, when Mr. Kelly was out of town, and probably at Bromley. And though the letters bear date upon the 20th of April, yet it is not to be imagined, that they were wrote upon that day; for it requires a good deal of time to reduce three letters into cyphers: and the method generally used, where letters are to be sent in cyphers, is to write them in common hand first, and then reduce them to cyphers after: so that it is probable the substance of these letters was dictated many days before they were perfected and sent.

But the evidence given by the Bishop's servants is not to be regarded.

The first servant, when he had sworn what he thought was material for the Bishop, being pressed by a noble lord with a question relating to the letter directed to Dubois, refused to give any answer, till the Bishop publicly gave him leave; though he was sworn to speak the whole truth: which shews too great an attachment to his master's interest to deserve much credit.

He and the second witness did admit, that the apothecary, or the minister of the parish, might be with the Bishop without their knowledge; and if so, why not Mr. Kelly, whose visits required more secrecy than either of the others?

And I must here observe, that what the reverend prelate insisted upon, to add credit to the evidence of these witnesses, is the greatest objection to their testimony imaginable.

They tell your lordships, that though they were with the Bishop in the Tower, yet he never once spoke to them concerning the matter they had given in evidence, till they themselves recollected it upon reading the Report; and finding that the Bishop was charged with being the author of three letters, dated the 20th

of April, they immediately recollect that the Bishop was ill at that time, and they constantly about him. This seems to be a story scarce credible.

That the Bishop himself, who was so nearly concerned, should not, upon reading the Report, recollect the circumstances he was under at the time when those letters bore date, if the truth was as they would represent it, but that the servants should first recollect this, and suggest it to their master.

Or if the Bishop did recollect it, it is strange he should not mention it to those servants, who were present with him in the Tower, and the only persons, who, as they say, were capable of clearing his innocence.

This had been very natural, and proper under his circumstances: and his not speaking to them first, could hardly proceed from an unreasonable scruple, lest he should be suspected of laying a biass upon them; since his lordship has, after he knew they were to be witnesses, given each of them a place under him as dean of Westminster.

The rest of the servants that were called, though they contradict the first, by admitting that two other gentlemen were at the Bishop's at Bromley, during the time in question; yet they plainly shew a greater regard for their master's interest, than for truth: for though one of them was but the helper in the stable, and another the nurse that attended his lady in her illness, yet they take upon them to swear, that they verily believe no stranger could be with their master in private but they should have known of it, and that they never knew of Mr. Kelly's being there.

Every body's observation must suggest to them that such a belief must be without foundation.

The next arguments used on behalf of the reverend prelate at the bar, were raised from his unambitious, resigned temper of mind, and from the style of the letters laid to his charge, that it is not probable he should use so indecent an expression of persons he was concerned with, as to call them pretending, unsupported people.

What weight there is in these arguments, I must submit to your lordships, who are much better acquainted with his temper and stile than I can pretend to be.

The last thing pressed by the reverend prelate, is a solemn protestation, I cannot say of innocence, because it seems to me to be conceived in such terms as not to contradict any part of the charge insisted upon by the counsel for the Bill:

It is chiefly calculated to answer some particular circumstances of times, without any denial of the general charge, or the least declaration of affection or loyalty towards his present majesty.

But if his protestations amounted to a direct and positive denial of the charge, they ought not to have any weight with your lordships, since this is a defence equally in the power of the most guilty as well as the innocent: a little proof is better than many protestations.

And I cannot help observing upon this head, and I hope his lordship won't impute this observation to ill-nature, but a sense of my duty, which obliges me to make all proper observations, that it appears his lordship has not always that strict regard to truth, which he ought to have, by the papers taken upon his servant at the Tower.

The nature of the punishment has been much talked of in the course of these proceedings, and great lamentations made upon it, but surely without any reason.

For this argument supposes the party guilty of the charge, or else it is ridiculous to object to the severity of the punishment.

And I may venture to affirm, this is the mildest punishment that ever was inflicted for such an offence.

His life is not touched; his liberty nor property affected; he is only expelled the society whose government he disapproves, and has endeavoured to subvert; and is deprived of the public employment which that government had intrusted him with: the enjoyment of his life, his private estate, and his liberty, under any other government that may be more agreeable, is allowed him.

This is scarce to be called a punishment, being nothing more than what was absolutely necessary for the public security.

The Commons of Great Britain have done their part towards providing this security, and I don't doubt but it will meet with the concurrence of your lordships.

Then the Bishop being asked whether he had any thing farther to offer, declared that he had not.

May 15th. The Bill was read a third time. And, after long debate,

The question was put, "Whether this Bill shall pass?" It was resolved in the affirmative.

"Dissentient.

"1st. Because the objection which we thought lay against the Bills of Plunkett and Kelly, 'That the Commons were thereby in effect let into an equal share of judicature with the Lords,' does hold stronger, as we apprehend, against the present Bill; since, by means of it, a lord of parliament is in part tried and adjudged to punishment in the House of Commons, and reduced to a necessity, either of letting his accusation pass undefended in that House, or of appearing there, and, as we take it, derogating from his own honour, and that of the Lords in general, by answering and making his defence in the lower House of Parliament.

"2dly, Because we are of opinion, that the Commons would be very far from yielding to the Lords any part of those powers and privileges which are properly theirs by the constitution, in any form or under any pretext whatsoever; and it seems to us full as reasonable that

the Lords should be as tenacious of the rights and privileges which remain to them, as the Commons are on their part.

"3dly, We think this Bill against a lord of parliament, taking its rise in the House of Commons, ought the rather not to have received any countenance in this House; for that, as it appeared to us by the printed votes of the House of Commons, that House had voted the Bishop guilty of all the matters alleged against him in the Bill before the Bill was brought into that House, and consequently before the Bishop had any opportunity of being heard: and although there be nothing absurd in passing such a vote, in order to their accusing by an impeachment; yet it seems to us absolutely contrary to justice, which ought to be unprejudiced, to vote any one guilty, against whom they design to proceed in their legislative capacity, or in nature of judges, before the party has an opportunity to be heard, or the Bill which is to ascertain the accusation is so much as brought in.

"4thly, We are of opinion, that no law ought to be passed on purpose to enact, that any one be guilty in law, and punished as such, but where such an extraordinary proceeding is evidently necessary for the preservation of the state: whereas the crime offered to be proved against the bishop of Rochester is, as we apprehend, his partaking in a traitorous conspiracy against the government; which conspiracy, by God's blessing, is detected, and, as we hope, disappointed, without the aid of such a dangerous proceeding as we conceive this to be.

"5thly, Because there are certain known and established rules of evidence, which are part of the law of the land, either introduced by acts of parliament, or framed by reason and the experience of ages, adjusted as well for the defence of the life, liberty, and property of the innocent subject, as the punishment of the guilty: and therefore these rules are, or ought to be, constantly adhered to, in all courts of justice; and, as we conceive, should be also observed, till altered by law, in both Houses of Parliament, whenever they try, judge, and punish the subject, though in their legislative capacity: but since in many instances, in this and the two other proceedings by Bill, we have been taught, by the opinion of the House, that these rules of evidence need not be observed by the Houses acting in their legislative capacity, we clearly take it to be a very strong objection to this manner of proceeding, that rules of law made for security of the subject are of no use to him in it; and that the conclusion from hence is very strong, that therefore it ought not to be taken up but where clearly necessary, as before affirmed; and we desire to explain ourselves so far, upon the cases of necessity excepted, as to say we do not intend to include a necessity arising purely from an impossibility of convicting any other way.

"6thly, If it be admitted that traitorous correspondences in cyphers and cant words may to a degree be discouraged by this sort of proceeding, in which persons as we think are convicted on a more uncertain evidence than the known rules of law admit of; yet we are of opinion, that convenience will be much more than outweighed, by the jealousy it must of necessity, as we conceive, create in the minds of many of his majesty's most faithful subjects, that their lives, liberties, and properties, are not so safe, after such repeated examples, as they were before; and, by the natural consequence of this apprehension, an abatement of their zeal for the government may ensue, excepting such persons as have had more than ordinary opportunities of being well instructed in principles of the utmost duty and loyalty.

"7thly, We cannot be for the passing this Bill, because the evidence produced to make good the recital of it, or that the lord bishop of Rochester is guilty of the matter he therein stands accused of, is, in our opinion, greatly defective and insufficient, both in law and reason, to prove that charge; the evidence consisting altogether, to the best of our observation, in conjectures arising from circumstances in the intercepted letters, or on a comparison of handwritings, resting on memory only; and there being as we think, no proof of the Bishop's knowing of, or being privy to, any of the said correspondence: and as to the principal part of the charge against the Bishop, and on which, as we think, all the rest does depend, viz. the dictating the letters of the 20th of April, 1722, which the House of Lords seem to have determined that Kelly wrote; we are of opinion, that the Bishop has, in his defence, very clearly and fully proved that he did not, nor possibly could, dictate those letters, or the substance of any part of them, to Kelly, either on the day of their date, or at any time during several days next before or next after the day of their date, nor was in any capacity to write them himself, though the letters must have been wrote within that compass of time: and we are, on the whole, of opinion, that the proof and probability of the lord bishop of Rochester's innocence, in the matters he stood charged with, were much stronger than those of his guilt.—Strafford, Scarsdale, Denbigh, Bruce, Salisbury, Northampton, Montjoy, Poulett, Fran. Cestriens', Dartmouth, Cardigan, Litchfield, Anglesey, Craven, Aylesford, Foley, Hay, Ashburnham, Trevor, Osborne, Bathurst, Uxbridge, Weston, Gower, Compton, Masham, Arundell, Exeter, Guildford, Berkeley of Stratton, Willoughby Broke, Middleton, Pomfret, Cowper, Hereford, Brooke, Stawell, Bingley, Oxford and Mortimer."

"I dissent for the 6th and 7th reasons of the aforegoing protestation, and for the following reasons:

"1st, Because this extraordinary method of proceeding, by Bills of this nature, against persons who do not withdraw from justice, but are willing to undergo a legal trial, ought, in my opinion, to be supported by clear and con-

vincing evidence; and, I apprehend, there has been nothing offered to support the allegations set forth in the preamble of the Bill to inflict pains and penalties on Francis lord bishop of Rochester, but what depends on decyphered letters, forced constructions, and improbable innuendoes.

"2dly, I conceive that the examination of Philip Neynoe, taken before the lords of the council, not sworn to, nor signed, which appears to me to be the foundation on which the charge against the bishop of Rochester is built, has been, in my apprehension, sufficiently proved by the positive oaths of three persons, two of which have been for several months in separate custodies, confirmed by other circumstances, to have been a false and malicious contrivance of the said Neynoe, to save himself from the hands of justice, and to work the destruction of the bishop of Rochester.

"3dly, I do not apprehend that the letters of the 20th of April, which are suggested to be wrote by George Kelly alias Johnson, and dictated by the Bishop, have been sufficiently proved to be the hand-writing of the said Kelly; but, on the contrary, it appears, to the best of my judgment, that the letter of the 20th of August (stopped at the post-office, and from which the clerks of the post-office, on their memory only, swear they believe the said letters of the 20th of April to be the same hand-writing, though they never compared two original letters together, during all that time) has been proved by three credible witnesses, concurring in every circumstance of their testimony, and well acquainted with the hand-writing of the said Kelly, not to be his hand-writing; and I conceive, that the difference they have observed in the hand of the said Kelly, upon which they ground their opinions, is sufficiently supported, by comparing the said letter of the 20th of August with the letters wrote by the said Kelly to the lord Townshend and Mr. Delafaye, during the time of his confinement.

"4thly, I do not apprehend that any proof has been offered, to support what has been so much insisted on, and justly esteemed essential to the charge, that the bishop of Rochester dictated the letters of the 20th of April. But it has appeared, I conceive, that there has been no intimacy between the Bishop and the said Kelly; and the testimony of the Bishop's servants concurring with the evidence given on that head by the persons that Kelly lived in the strictest correspondency with, leaves, to the best of my judgment, no room to doubt but that the acquaintance between them was slender and public: and to suggest from thence, that the Bishop dictated the letters of the 20th of April, when it appeared that, for many days before, he could not possibly see the said Kelly, is, in my opinion, repugnant to reason, and contrary to justice. WHARTON."

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9 Geo. 1, c. 17.

AN ACT TO INFLICT PAINS AND PENALTIES ON FRANCIS LORD BISHOP OF ROCHESTER.

"Whereas in the years 1721 and 1722, a detestable and horrid conspiracy was formed and carried on by divers traitors for invading your majesty's kingdoms with foreign forces, for raising an insurrection and rebellion against your majesty, for seizing the Tower and city of London, and for laying violent hands upon your majesty's most sacred person, and upon his royal highness the prince of Wales, in order to subvert our present happy establishment in church and state, by placing a popish Pretender on your throne: and whereas for the better concealing and effecting the said conspiracy, divers treasonable correspondencies were, within the time aforesaid, carried on by letters written in cyphers, cant words, and fictitious names; which conspiracy, had it not been disappointed by the goodness of Almighty God, would have deprived your majesty's kingdoms of the enjoyment of their religion, laws, and liberties, involved them in blood and ruin, and subjected your people to the bondage and oppression of Romish superstition and arbitrary power: for which execrable treason Christopher Layer hath been indicted, tried, convicted and attainted. And whereas Francis lord bishop of Rochester, notwithstanding the many solemn assurances by him given of his faith and allegiance to your majesty, by taking the oaths by law appointed to be taken, instead of the oaths of allegiance and supremacy; which oaths he had likewise taken at sundry times, during the respective reigns of their late majesties king William and queen Mary, and of her late majesty queen Anne; and notwithstanding he had frequently abjured the Pretender, hath, in direct violation of his said repeated oaths and obligations, and to the great scandal of religion, and his holy function, been deeply concerned in forming, directing, and carrying on the said wicked and detestable conspiracy, and hath been a principal actor therein, by traitorously consulting and corresponding with divers persons to raise an insurrection and rebellion against your majesty within this kingdom, and to procure a foreign force to invade the same, in order to depose your majesty, and place the Pretender on your throne; and by traitorously corresponding with the said Pretender, and persons employed by him, knowing them to be so employed: therefore to manifest our just abhorrence of so wicked and abominable a conspiracy, and our zeal and tender regard for the preservation of your majesty's person and government, and of the Protestant Succession in your majesty's royal family, the solid foundations of our present happiness and future hopes; and to the end that no conspirator may, by any subtle contrivance or practice whatsoever, escape punishment, and that all others may by the justice of parliament be for ever hereafter de-

terred from engaging in any traitorous conspiracies or attempts, we your majesty's most dutiful and loyal subjects, the Lords spiritual and temporal, and Commons in parliament assembled, do humbly beseech your majesty, that it may be enacted; And be it enacted by the king's most excellent majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons in parliament assembled, and by the authority of the same, That the said Francis lord bishop of Rochester, from and after the 1st day of June, in the year of our Lord 1723, shall be and is hereby, to all intents and purposes, deprived of all and singular his offices, dignities, promotions, and benefices ecclesiastical whatsoever, and that the same, and every of them, shall from thenceforth be actually void, as if he were naturally dead; and that the said Francis lord bishop of Rochester shall from thenceforth for ever be disabled, and rendered incapable of and from taking, holding, or enjoying any office, dignity, promotion, benefice, or employment within this realm, or any other his majesty's dominions, and also of and from using or exercising any office, function, authority, or power ecclesiastical or spiritual whatsoever, and shall and do suffer perpetual exile, and be for ever banished this realm, and all other his majesty's dominions, and shall depart out of the same on or before the 25th day of June, in the year of our Lord 1723; and that if the said Francis lord bishop of Rochester shall return into or be found within this realm, or any other his majesty's dominions at any time after the said 25th day of June, in the year of our Lord 1723, he the said Francis lord bishop of Rochester, being thereof lawfully convicted, shall be adjudged guilty of felony, and shall suffer and forfeit as in cases of felony, without benefit of clergy, and shall be utterly incapable of any pardon from his majesty, his heirs or successors.

"And be it further enacted by the authority aforesaid, That all and every person and persons, who shall, from and after the said 25th day of June, in the year of our Lord 1723, be aiding or assisting to the return of the said Francis lord bishop of Rochester into this realm, or any other his majesty's dominions, or shall harbour or conceal him within the same, or any of them, being thereof lawfully convicted, shall be adjudged guilty of felony, and shall suffer and forfeit as in cases of felony, without benefit of clergy.

"And be it further enacted by the authority aforesaid, That if any of the subjects of his majesty, his heirs or successors, except such persons as shall be licensed for that purpose by his majesty, his heirs or successors, under his or their sign manual, shall, from and after the said 25th day of June, in the year of our Lord 1723, within this realm or without, hold, entertain, or keep any intelligence or correspondence in person, or by letters, messages, or otherwise, with the said Francis lord bishop of Rochester, or with any person or persons employed by him, knowing such person or persons to be so employed, such person so offending, being thereof lawfully convicted, shall be adjudged guilty of felony, and shall suffer and forfeit as in cases of felony, without benefit of clergy.

"And be it further enacted, That if any offence against this act shall be committed out of this realm, the same shall or may be alleged, laid, enquired of, and tried in any county within Great Britain."

The Acts against Plunkett, Kelly, and Atterbury, received the royal assent on May 27th, 1723, on which day the parliament was prorogued.

On Tuesday the 18th of June, the deprived bishop of Rochester, accompanied by his son-in law Mr. Morrice and his wife, embarked on board the Aldborough, one of his majesty's ships of war, and on Friday the 21st, landed at Calais.

In the debate, which took place upon the question, that the Bill against Atterbury should pass, Dr. *Willis* bishop of *Salisbury* (who in the course of the year was translated to Winchester) made the following Speech:

My lords; As I have sometimes troubled your lordships with what I had to say in other debates, I believe it will be expected that I should say something in a case so extraordinary as this is; and wherein a brother bishop is so nearly concerned. I beg leave to begin with taking notice of some things that were peculiarly addressed to this bench, both by the reverend prelate, and his counsel, from the bar.

The first is, that we would consider how agreeable it may be to the canons and discipline of the Church, in this extraordinary manner to deprive a bishop of all his preferments; and to prohibit him the use and exercise of his function for his life.

As to this objection, whatever influence it may have abroad among ignorant people, when the speeches come to be printed; yet, as to your lordships, who know our constitution so well, I cannot imagine that it can have any weight or influence at all. And indeed when I consider all the acts of parliament relating to the supremacy, that have been made for near 200 years; when I consider the articles of our Church, our canons, and the subscriptions that the Bishop himself must have made, and must have required from others, in the exercise of his function as a bishop; when, I say, I consider all these things, it is matter of wonder to me, that such an objection should be made, either by a bishop of the Church of England, or by a lawyer of the kingdom of England.

I do not indeed recollect above one instance of a particular act of parliament made to deprive a bishop; which is, that of Fisher, bishop of Rochester; who was so deprived in the time of Henry 8. But, as to general acts of parlia-

ment, whereby both bishops and presbyters have been deprived of their preferments, we have a good number. Thus, in the beginning of queen Elizabeth's reign, almost all the bishops of England were so deprived: and at the Revolution, many were so; and all might have been so, if they had not complied with the terms of the act of parliament: and at the Restoration, many hundreds of presbyters were deprived in the same manner. And I conceive that it cannot well be doubted, but that the same authority which can make laws by which the whole bench may be deprived, may exert itself in a particular case, if they have just reasons for it.

As to the trial of bishops for any crimes they shall be guilty of, we are to consider the different nature of the crimes of which they are accused; and the trial by law must be accordingly. If the crime be of an ecclesiastical nature, such as ecclesiastical courts can take cognizance of, as simony, heresy, and the like; the trial regularly must be by the archbishop of the province, taking to his assistance some of his suffragan bishops.* But even in this case, if either the archbishop shall, upon complaint, neglect to try him; or, if upon trial he shall acquit and absolve him, the accuser may appeal to the king in chancery: which court may appoint a commission of delegates, who may, by the authority of the crown, judge him, deprive him of his bishopric, prohibit him the use of his function for his life (if the crime deserve it,) though he were before acquitted by the archbishop. But if the crime be of a civil nature, such as treason (which is the case now before us,) the ecclesiastical authority has nothing at all to do with it; and should any ecclesiastical judge attempt to meddle with it, he would be judged to attempt against the king's crown and dignity, and quickly have his proceedings stopped, by a prohibition out of the temporal courts. And I would beg leave to observe further, that were this bishop to be tried in the common course of law for the crimes whereof he is accused in this Bill, it must be either by your lordships, as a member of this House; or by the judges and a jury in Westminster-hall. I would not at present say which, because it would lead me out of the way: but in this case, if either your lordships, or the judges below, should pass sentence upon him for the treason of which he is here accused, that sentence would, *ipso facto*, deprive him of the bishopric: it would also make him liable to lose his life; but it would not, *ipso facto*, take it away, as it would his bishopric: he might, notwithstanding that sentence, live many years; but from the moment of it, would be no more bishop of Rochester.†

These things, I humbly conceive, are abundantly sufficient to answer this first difficulty; and therefore I shall add no more but this one observation; that the way that is now taken to deprive him, is the only way that I know of, wherein the bishops can have any part in the sentence of deprivation.

The next thing that was suggested from the bar, particularly to this bench, was, that we should consider well what we are doing, and have a care that we do not, by concurring in this Bill, make our titles to our bishopricks precarious.

As to this admonition, the answer is very easy, that it becomes us, as we have the honour to have seats in parliament, to take care to do justice; as, on the one side, to the prisoner, so on the other side, to our king and country; and to trust in God, that in so doing we shall neither hurt ourselves, nor our successors. But, so far as just judges may look to events, the argument seems to me to lie the other way: for, if for want of doing justice against traitors to king George, the Pretender should happen to prevail, (which God avert!) the title of Protestant bishops is like to be very precarious indeed.

As to the power of parliament to pass Bills of this kind, the parliament always had it, has frequently exercised it, and always must have it; it being essential to the very being of the supreme power. The lives and liberties of

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* See the Case of bishop Watson, vol. 14, p. 447.

† Under the doctrine of the sacramental nature of ordination, and of the indelible character which it has been held to confer, I suppose that in the case stated, Atterbury would have remained a bishop though without a see.

Though the Romish Church holds that there are seven orders, viz. presbyteri, diaconi, subdiaconi, acolyti, exorcistæ, lectores, ostiarii; yet other opinions have been maintained by some of their doctors. Much learning has been employed to investigate not only what is the number of orders, but which they are, and what of them are sacraments. Moreover the doctors who agree in consolidating the orders of bishop and priest, yet differ very nicely in their distinctions between the two classes.

The doctrine of the indelible character of orders has been carried farther than seems to be necessary or in practice very useful: viz. to the maintenance of the dogma that a Christian priest, legitimately ordained, would remain a Christian priest, even though he had apostatised from Christianity; nay even while he was suffering the punishments of hell. In parliament it underwent some discussion in the debates during the progress of the Act (stat. 41 Geo. 3, c. 63), "to remove doubts respecting the eligibility of persons in Holy Orders to sit in the House of Commons;" ancillary to which was prepared, by a committee of the House of Commons, a very learned Report.

As to deprivation from benefices, and degradation from orders, see Burn's Ecclesiastical Law, titles 'Degradation,' 'Deprivation.' In this Collection, see the Case of Samuel Johnson, vol. 11, p. 1389: and also vol. 1, p. 841, as there referred to.

every man in England are subject to it: and though the exercise of this power may be dangerous to persons who will venture upon treasonable practices, trusting to their cunning and artifice to skreen them from the law; yet I have that confidence in the integrity and justice of the crown, and two Houses of Parliament, that, so long as this example is followed, of giving a full and fair hearing to the persons accused, innocent men cannot easily suffer; or, in all events, that if corruption or faction should ever so far prevail, that there should be danger to innocent persons, it will be much easier to corrupt witnesses or juries, or to find other methods to destroy them, than it will be to prevail upon a parliament to do it: as I am persuaded that, in this particular case, had there been any corruption, some other method would have been found out, more effectually to come at the person concerned than this is like to do.

The last particular that the Bishop peculiarly addressed to this bench, was, that we would consider the words of St. Paul to Timothy; "Against an elder receive not an accusation, but before two or three witnesses," 1 Tim. ch. 5. v. 19.* The sense of which words his lordship understood to be, That an accusation should not be so much as received against an elder or presbyter, and much less against a bishop, but upon the oaths of two or three witnesses.

In answer to this, I beg leave to observe, that our translation renders the words, not, 'upon the oaths,' but, 'before two or three witnesses:' which seems to import a very different sense from that his lordship puts upon them. But, not to enter into any critical examination of the truth of our translation, or what the real sense of the words is, I would only make these two short observations: first, that the sense the Bishop puts upon them, that an accusation against a presbyter or bishop, must not be so much as received into court, but upon the oaths of two or more witnesses, is not practised in the Church of England; and, I believe, never was practised in any Christian Church whatever.

The second observation I would make is, That whatever be the sense of these words, it regards only the conduct of a bishop towards his presbyters; but certainly was never intended to give a law to the supreme power of a kingdom, in its proceedings in cases of high-treason, against any subject whatsoever.

But the Bishop urges further, that the Jewish law did require at least two, or more witnesses in all judicial proceedings; and from thence infers, that it ought to be so amongst us.

In answer to this it may be replied, That this is a part of the judicial law of the Jews, which was not given to us, and therefore doth not oblige us any more than the rest of that law doth; except where the reason of the thing lays an obligation upon us. But, indeed, I am of opinion, that that law doth oblige us, so far as it was intended to oblige them, and so far as it can be adapted to the infinite variety of cases that must happen in judicial matters. That law is very short, and therefore must leave many questions that may be made about it undetermined: I shall at present take notice of these two only, which may be material to our present dispute; the first is, whether the meaning of it be, that all controversies and accusations whatever must be determined by witnesses, and no other way? or, whether upon supposition that the matter be to be determined solely by witnesses, and no light can be brought to it any other way, that then the witnesses must be at least two? The second is, whether those witnesses must swear directly to the fact; for instance, that they saw such a man murder another, or the like? or, whether it may not be sufficient, that they swear to such circumstances, as infer a strong and violent presumption that such a fact was committed by such a person?

These things are left undetermined in that short law of the Jews; but, I humbly conceive, are sufficiently determined by the nature of the thing, and by the laws of all nations, and particularly of our own. It is true, indeed, that in cases of high treason, we have from political considerations determined, that there must be two positive witnesses to some one or more overt acts of the same treason: but, as to all other crimes, that equally affect the lives and estates of all the subjects of England, this is not the case; and men may by law lose their lives when there is not so much as one positive witness to the fact. I beg leave to explain this in the words of my lord chief justice Coke; "When a trial is by witnesses,* regularly the affirmative ought to be proved by two or three witnesses; but when the trial is by verdict of twelve men, there the judgment is not given upon witnesses, or other kind of evidences, but upon the verdict; and upon such evidence as is given to the jury, they give their verdict; and many times juries, together with other matter, are much induced by presumption." And, indeed, if no man could be convicted of murder, or robbery, or other crimes of that nature, but by two positive witnesses that saw the fact done; nothing would be easier or safer than the commission of those crimes; and no man could have any security, either for his person or his estate:† and therefore, if in cases of high treason our law requires positive witnesses, it is not from any moral necessity, or point of conscience; but from political reasons, which must, and always will be, subject to the judgment of parliament.

Having now done with what was from the bar peculiarly applied to this bench, and hav-

* Upon the text cited by the prisoner had been erected by the church of Rome a strange fabric of jurisprudence, in which was verified Pope's sneer, that

"A saint in crape is twice a saint in lawn."

* See 1 Inst. fol. 6, b.

† As to circumstantial evidence, see the Case of James Stewart, A. D. 1752, *post*.

ing, I hope, given a very plain answer to it, I now beg your lordships' leave to proceed more directly to the bill itself. And here two things are necessary to be considered, in order to convince your lordships, that it is a Bill fit to be passed: the first is, the lawfulness of it; the second is, the prudence or expediency of it.

As to the lawfulness of it, it will be necessary also to consider two things; first, whether your manner of proceeding in this Bill be lawful? secondly, Whether the Bishop be really guilty of the crimes charged upon him?

As to the manner of proceeding,* many things have been objected: that it is by way of Bill, and not a trial in the course of law; that evidence has been admitted, that would not have been admitted in any of our courts; that these things are contrary to the liberty of the subject; that every subject has a right to the laws of his country; and that he has an injury done him, if he be denied the benefit of them. This I take to be the sum of what has been objected against the justice of your proceedings in this Bill.

In answer to these objections, I beg leave to

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* This topic is with much ability discussed by a friend to the proceedings against Atterbury, in two letters, signed Philopatris, which were published in the London Journal, May 11th and 18th, 1723, among the letters of Britannicus.

The justice and the expediency of having recourse to special acts of parliament, for the punishment of offences previously committed, were much debated in the course of the proceedings against the earl of Strafford, (see his case, vol. 3, p. 1382,) and against sir John Fenwick (see his case, vol. 13, p. 538.)

The great fundamental objections to Bills of Attainder are referable to three principles.

1. The injustice, tyranny and oppression of *ex post facto* penal enactments.

2. The insecurity of property, liberty and life, under the union of the judicial and legislative authorities.

3. The mischievous tendency of specially applying the power of the legislature, to the cases of particular individuals.

Blackstone is remarkably brief respecting Acts of Attainder. He reprobates *ex post facto* laws: and in his Introduction to the Commentaries (sect. 2, vol. 1, p. 46,) he refers to what Cicero says of the Roman Privilegia. Cicero's language is very strong: "Leges præclarissimæ de xii tabulis tralatæ duæ, quarum altera privilegia tollit." De Leg. lib. 3, sect. 19. "In privos homines leges ferri noluerunt; id est enim privilegium, quo quid est injustius?" Ibid.

"Quo jure, quo more, quo exemplo legem nominatim de capite civis indemnati tulisti? Vetant leges sacratæ, vetant xii tabulæ, leges privis" [Blackstone adopts 'privatis;' Stephanus recognizes 'privis,'] "hominibus irrogari: id est enim privilegium. Nemo unquam tulit: nihil est crudelius, nihil perniciosius, nihil quod minus hæc civitas ferre possit. Proscriptionis miserrimum nomen illud, et omnis acerbitas Sullani temporis, quid habet, quod maximè sit insigne ad memoriam crudelitatis? opinor, pœnam in cives Romanos nominatim sine judicio constitutam." Orat. pro domo suâ, sect. 16, 17.

Montesquieu contends for the separation of the legislative from the judicial functions: but in speaking of the ostracism of the ancient republics, he yields to that epigrammatic propensity, which is one chief cause of the extreme unsatisfactoriness of his work.

Archdeacon Paley says, "The first maxim of a free state is, that the laws be made by one set of men, and administered by another; in other words, that the legislative and judicial characters be kept separate."

And he proceeds:

"This fundamental rule of civil jurisprudence is violated in the cases of Acts of Attainder or confiscation; in Bills of Pains and Penalties; and in all *ex post facto* laws whatever; in which parliament exercises the double office of legislator and judge. And whoever either understands the value of the rule itself, or collects the history of those instances in which it has been invaded, will be induced, I believe, to acknowledge, that it would have been wiser and safer, never to have departed from it. He will confess, at least, that nothing but the most manifest and immediate peril of the commonwealth will justify a repetition of these dangerous examples. If the laws in being do not punish an offender, let him go unpunished. Let the legislature, admonished of the defect of the laws, provide against the commission of future crimes of the same sort. The escape of one delinquent can never produce so much harm to the community, as may arise from the infraction of a rule, upon which the purity of public justice, and the existence of civil liberty, essentially depend." Principles of Moral and Political Philosophy, book 6, c. 8.

"The proper formal notion of government," says bishop Butler, (Analogy, part 1, chap. 2,) "is the annexing pleasure to some actions, and pain to others, in our power to do or forbear, and giving notice of this appointment beforehand to those to whom it concerns."

Locke is strenuous for punctilious administration of the prescribed rules of law. See Treatise on Government, chap. 7 and 11. See, too, Hooker as referred to by him. If Locke had composed his work after Fenwick's plot, he might perhaps have noticed the topic of Bills of Attainder, and considered the distinguishing circumstance of Fenwick's case.

It may not be altogether impertinent to mention here, that according to some, the kings of France, when they arbitrarily passed sentence of imprisonment by lettres de cachet, acted in a legislative capacity.

consider, first, Wherein the liberty of England consists; which is a point commonly pretty much mistaken. Many people are apt to imagine, that the difference betwixt us, and some of our neighbouring countries, is, that they are under absolute power, and we are not; whereas, in truth, all countries that are supreme within themselves, have equally an absolute power; and in the nature of the thing it cannot possibly be otherwise: no government can subsist, if there be not a power in it to change, to abrogate, to suspend, or dispense with its laws, as necessity or conveniency shall require; which is what we call absolute power: and therefore, the difference betwixt one government and another does not lie in this, that one has such a power and the other has not; but lies merely in the difference of the hands in which this power is placed. Where this is placed in one hand, in the king, we call that an absolute monarchy: where this is not solely in the king, but only as he acts in conjunction with the states of the kingdom, that we call a limited monarchy; and the people that live under such government, are called a free people; because they live under set laws, which could not at first be made, nor can afterwards be altered or dispensed with, but by their own consent. However, there is still in such countries, a power equally above all their laws, as there is in the most absolute monarchy in the world.

What I have said upon this first head, will in a great measure explain a second question: what that right is, which the subjects of this country have to its laws? Which is, in short, a right to claim the benefit of them against the crown, or any court acting under the crown, till the states of the kingdom (which are virtually every man in the kingdom) think fit to consent to the alteration of them. The king is indeed supreme, but his power is only according to the laws in being: by them he is bound to act, and if any of his officers act contrary to them, what they do is null and void; and they are punishable for it; and the subjects have a claim of right against them. But if the king and his people think fit to come to a new agreement to alter any such law, there is an end of all claim of right in the subject: the claim is taken away by their own consent; for, as I said before, every man in the kingdom virtually consents to what is done by an act of parliament.

And there is an absolute necessity that there should be such a power as this in every country; for the state of human affairs is so changeable, that it does not admit of any set of unalterable laws. What is good at one time, may be destructive at another; and what is generally good, may, under particular circumstances, require a dispensation by a proper authority. And here give me leave to observe to your lordships, the difference there is betwixt the eternal laws of justice and righteousness, and all positive laws whatever. That as to the first, we are made for them, and the nearer we do in all things conform to them, the more noble, and lovely, and excellent creatures we are: but as to positive laws, they are all made for us; and the more they conform to us, the more they obviate all our wants and difficulties, the more they answer to all our necessities the better they are.

As to what is complained of, that your lordships have admitted evidence to be read that would not have been admitted in the courts below: I conceive, that acting in the capacity you now do, you have a full power to do it, and have not broken any of the general rules of justice by it. You have let in all the light that you thought might be proper to give you a full knowledge of the matter; and in the capacity in which you now act, I cannot but humbly be of opinion, it was your duty to do so: but in forming of your judgments, I take for granted, that your lordships will distinguish, and lay no more weight upon any thing than it deserves.

As to the rules of receiving evidence in Westminster-hall, I conceive, that they are no part of natural justice, but only artificial rules framed for conveniency; and bind no courts, but as they have agreed to them, and so are become the customs of the court. That these rules are no part of natural justice appears from hence, that even among ourselves they are different in different courts: that those used in our courts, are very different from those used in other countries: that they differ here, according to the different causes or crimes that are to be tried. Nay, they are so far from being fundamental parts of justice, that they must require a good deal of time and art to form them. And I am persuaded, that were a person of good natural sense, who knows nothing of the law, asked his opinion, he would be apt to think it to be a part of natural justice, that every person that prosecuted a cause in any court, should be at liberty to produce before that court whatever he thought material to his cause. And there is no doubt, but that this was the original way of proceeding: but that in process of time, when courts came to have a good deal of business, and they found by experience, that this way of laying every thing before them tended to lengthen causes, (which was especially inconvenient where juries are concerned, who must end a cause before they part) these rules were gradually found out; which, though they may be, for the reasons above specified, generally convenient, yet may sometimes hinder justice, by not suffering all the light to come into court, that may be material in the cause.

Having said thus much concerning the justice of your method of proceeding, I now come to consider the second, and the main point of justice to be regarded in this Bill; which is, Whether the Bishop be guilty, or not, of the treasonable practices charged upon him in it. And in this I shall be the shorter, because your lordships have heard the evidence on both sides, and all that has been said from

the bar by both sides upon it; and because there are many noble lords in the House, much abler to lay things of this nature distinctly and clearly before your lordships than I am.

The cause of Kelly is so connected with that of the Bishop, that I must beg leave to speak a few words to the one before I proceed to the other. As to Kelly, I would observe in the first place, that one strong presumption of his guilt is, that when he was first taken up, he resisted the officers; that he seized his sword and some papers that had been taken away from him; and was resolute to burn those papers, though with the apparent hazard of his own life, and being guilty of the murder of one of the officers that had seized him.

In the next place, it is proved before your lordships, that after he was taken up, the people at his lodgings burned the rest of his papers; a plain evidence, that they who knew his manner of life and conversation, suspected that he was guilty. And this is agreeable to what Neynoe told the chancellor of the exchequer; that there was at that time a general burning of papers.

Thirdly, Another presumption of his guilt, is, that when he was taken up the second time, he offered several sums of money to the people of the house where he was in custody, to suffer him to escape, as appears from their oaths at the bar. These things I mention, not as full proofs of his guilt, but as strong presumptions, that make every thing else that is sworn against him very credible.

The chief evidences of his guilt, are, a great number of intercepted letters, both from him, and to him, containing treasonable matters. Those from him, are by several witnesses proved to be his hand-writing, particularly by the officers of the post-office, who took them and transcribed them. And as to those to him, several witnesses have proved that he gave orders at several public houses to take them in, when they came from the post, that he himself received them from thence, opened, and read them: and it is also further proved, that answers were returned to them in his own hand-writing. These things altogether, I take to be such plain and strong evidences of his guilt, that I shall trouble your lordships no farther about him.

As to the person concerned in this Bill, though it be a great trouble to me, to think that any bishop of this Church should be guilty of so foul a crime as that objected to him; yet I cannot but be of opinion, that if he be really guilty, the interest of our Church, as well as justice to our king and country, do require, that he should be convicted and punished. And indeed, I cannot but be humbly of opinion, that whoever believes Kelly to be guilty, must believe the Bishop to be guilty too.

I shall not insist upon what is commonly called hear-say evidence, though there be a great deal of it against the Bishop; only must observe, that the conduct of a Protestant bishop must have been very odd and unaccountable, if he be innocent, that so many Jacobites (as have done in this case) should declare, that they not only esteemed him to be in the plot, but to be the chief conductor of it. It is, however, fit to say something as to the case of Neynoe; because the Bishop and his counsel have taken up so much of your lordships' time, and produced so many witnesses to prove him a knave. I did indeed myself always think him to be a knave, and that nothing that he said was to be believed, merely upon his authority: but on the other side, the testimony of the greatest knave in the world may be taken against himself: and they themselves have proved, that he was a Jacobite, and thoroughly in that interest, even when he was making some discoveries against them; and therefore, what he says, in that respect, bears some weight, as being against persons whom he favoured, and would hurt as little as possible. Some other things that he had said are also confirmed by concurrent circumstances, and other discoveries; and these may have their weight, though he were never so great a knave. One of the things that he said in his confession, was, that he frequently went with Kelly to the bishop of Rochester's, and left him there (as Kelly told him) to write his letters. This is confirmed by a credible witness at your bar, who swears, that Neynoe used to be frequently at his house, and told him, at least three or four times, that he waited there for a sensible, ingenious gentleman that was gone about business to the bishop of Rochester: he did not indeed tell him his name; but the thing seems to me to look stronger than if he had; because it would have looked more like a piece of art and contrivance to have told the name of a man, whom he knew to be gone to the Bishop about a criminal correspondence. I would only beg leave to take notice to your lordships of one thing more relating to Neynoe: the Bishop's witnesses have fully proved, that Neynoe told them, that the chancellor of the exchequer had given him several sums of money, to endeavour to get out of Kelly the explication of the cant names that were used in the correspondence; and that he had promised him much greater sums, if he would go to France, and get it out of Dillon and the Jacobites there: the inference from which I take to be very plain, that the court did not then know, who the persons were that were designed by those cant names; and that they did believe that Kelly did know, and that Dillon and the Jacobites in France knew too: which effectually and fully confutes that suggestion of the Bishop, of which he did not bring the least proof, that the plot was a contrivance of persons in power.

The next thing I would beg leave to take notice of, relating to the Bishop, is a letter (taken among his papers) from a lady of great quality; of which the Bishop, though it was objected to him by the counsel for the Bill, has taken no notice; which I conceive he would and ought to have done, had it been possible

to give any fair account of it. The lady* in that letter tells him, "That she sent something that she had received, she could not tell for whom; but let it be for whom it would, she thought he might be trusted, and that it could not be put into better hands." A strong suspicion this, considering all circumstances, that here was a correspondence by cant names, which the lady did not certainly know, but believed the Bishop might; or, however, that he was in all events a person to be trusted.

Another very suspicious circumstance against the Bishop, is, the letters from captain Halstead, and what has been proved at your bar, that this same captain Halstead, a little before he went in his ship to fetch over the duke of Ormond,† waited upon the Bishop, and staid with him an hour. This thing indeed directly proves nothing; but all things considered, is very suspicious: and the more so, because the Bishop has given no account, either of his acquaintance with him in general, or of the particular reason of that visit, at a time that leaves so much ground to suspect the worst.

The next particular that deserves your lordships' consideration, is the letter to Dubois found among the Bishop's papers when he was taken up, and found now to be sealed with the same seal with that letter taken upon the Bishop's servant, which he confesseth to be his own hand-writing. It is not indeed proved, that the letter to Dubois is the hand-writing of the Bishop; but any body that reads it, will easily be persuaded, that it is not the natural and ordinary way of writing of any person, but a disguised hand like a print; except only some few letters which escaped the care of the writer, and are very like those of the Bishop. But after a long examination, which has taken up a great deal of your lordships' time, it appears plainly, that the seals are the same, and that the one could not be counterfeited from the other; because the first letter was originally taken with the seal broken, and was in the possession of the House of Commons when the second letter was taken upon the Bishop's servant. It appears plainly by this letter to Dubois, that the person who wrote it was in a secret and dangerous correspondence; that he was an acquaintance of Mr. Johnson or Kelly; that he received letters by his hand, and wrote an answer in his hand. How far all these circumstances, taken together, prove the Bishop to be the author of this letter, I must submit to your lordships' judgment: for my part, I think they do; especially considering, that the Bishop has given no account of it, which he ought to do by law, of a letter of this nature, plainly proved upon oath to have been in his possession.

I now beg leave to proceed to that which is the principal charge against the Bishop, the dictating to Mr. Kelly the three letters of the 20th of April; signed, one by the name of Jones; another by the name of Illington; the third by the figures 1378; which the decypherers explain by the letter R. The first directed to Mr. Chivers, or Dillon; the second to Mr. Musgrave, or lord Marr; the third to Mr. Jackson, or the Pretender.

It may be proper, before I take notice of the proofs which shew that the Bishop did really dictate these letters, to take notice of an objection with respect to the time: the letters are dated the 20th of April, and the Bishop has produced five or six of his servants, who swear, that about that time he was so very ill, that he could not write himself; and that he did not see any person to whom he could dictate these letters. Now, in answer to this, it may be replied: that it does not appear, that all the servants which the Bishop then had, were produced before your lordships; and you cannot but be sensible, that treasonable practices are commonly carried on in a very secret way: and it appears, that the Bishop's correspondence with Kelly has been so carried on; for though there is plain evidence that they were frequently together, and that they were acquainted is confessed, both by the Bishop and Kelly; yet scarce any one of the servants produced would confess that ever they had seen Kelly, or so much as ever heard of the name of Johnson, which was the name by which he went. In the next place, none of these witnesses prove, that the Bishop was so bad that he could see no company, till about the 16th or 17th of April; and it is very probable, that the letters must have been dictated so long, if not longer, before the 20th, on which they are dated; because Kelly was to transcribe and put them into cypher, which is a work of time and care; and perhaps, after all, they might be designedly post-dated, that the Bishop finding himself going into a great fit of the gout, might have all that to plead which your lordships have heard, if the matter should ever be called in question.

Upon all these considerations, I cannot but think it very clear, that the Bishop might have dictated these letters: we are now, therefore, to examine whether he did or no.

The first thing that brought any light into this matter, was the small accident of a dog being sent from France, which, by the intercepted letters appeared to be sent to one that went by the names of Jones and Illington. When Mrs. Barnes was examined before the council upon Kelly's being taken up, it appears plainly she was upon the reserve, and would confess nothing that she thought might tend any way to hurt Kelly: but being asked about this little dog, who it was for, she readily answered, That Kelly had told her it was for the bishop of Rochester; which she has since confirmed by oath at the bar of this House. This little accident, not suspected at the time of the discovery to be of any consequence, has given occasion since, to look into so many circumstances, as plainly bring the matter home to

* The Duchess of Ormond.

† See the Proceedings against him, vol. 15, p. 1008.

the Bishop. And indeed, if all the particulars in the intercepted letters be compared with those things that are in proof with respect to the Bishop, I believe your lordships will be of opinion, that they cannot all belong to any one person in the world besides himself. In the first place, since it is proved that Kelly wrote these letters, the person who dictated them must have been an acquaintance of Kelly's; it is confessed on all hands that the Bishop was so. In the next place, it is implied in one of the intercepted letters, that the person that went by the name of Jones and Illington was a clergyman; so far still agrees to the Bishop. Again, further: this person is mentioned in all the intercepted letters as a person of great consequence and credit, upon whose advice the party very much depend; and indeed the very air and manner of writing the three letters, plainly shew, that the person that wrote them thought himself so; this also agrees with all the other discoveries about the Bishop. Were there no other particulars but these, it will be hard to imagine that they could well belong to any other person. But if we consider further, that this Jones or Illington came to town such a day of the month, went out of town such another day of the month, came back again to town such another day, was himself sick at such a time, that his wife was sick at such another time, and that she died at such a time; all which are in evidence with respect to the Bishop; if we do, I say, consider all these circumstances together, it will plainly appear, that they can belong to no other man in the world but the Bishop.

After this, I humbly apprehend nothing need be said; however I beg leave just to mention something relating to the letter that was taken upon the Bishop's servant; by the whole air of which letter, it looks as coming from a person who did not esteem himself to be innocent, but who thought, that nothing could be legally proved against him: and therefore there is not one word of his innocence in it, which is the first thought that must naturally have come into the head of any one that really was so. He writes wholly with the air of a man that had been used to intrigues; speaks of the concern that his friends should have for him and the cause; discourses largely about the kind of evidence that was against him; takes notice in particular what cannot affect him: "If," says he, "the Narrative [i. e. Report,] relates chiefly to Neynoe's, Sample's, and Layer's affairs, so far it cannot affect me; for I never heard of the names of either of the three, till after this plot broke out." It is plain by these words, that he did not then know what was in the Narrative against him; but he is very sure, that neither Neynoe, nor Sample, nor Layer could affect him. Could an innocent man have thus distinguished, and could not they have affected him as much as any body else, if he really was innocent? Nothing can affect such a person but forgery, and that may come from any quarter: but in the whole letter he does not express the least suspicion of forgery; and yet, as I said before, this is the first thought that must naturally have come into the head of an innocent person, because nothing but forgery could do him any harm. I would only just beg leave to hint at this one thing more; that as he says, that these three persons could not affect him, because he never knew them; so accordingly they have not affected him, or said any thing of their own knowledge about him; which is one good evidence, that what is said against him is not forged, but real.

I am afraid that I have troubled your lordships too long, though with a very imperfect representation of the justice of this Bill; and therefore shall be shorter upon the next head, which is the expediency or prudence of it.

Had there been what we call legal evidence against the party concerned, your lordships, I take for granted, would not easily have gone to this extraordinary method of proceeding: for though it cannot be doubted but that the parliament have this power, whenever they think proper to make use of it; yet, I do agree with other noble lords, that it is a power not fit to be used, but where and when the public good requires we should use it, which I humbly conceive is the case at present. A most dangerous plot against the government has been discovered: a great number of letters and papers relating to it have been laid before the two Houses of Parliament: these have been printed and published by order of both Houses: the eyes, not only of our own country, but of all Europe, are upon us, to see what we will do. Though the evidence of a plot in general, be as clear as the light; and the evidence against several particular persons very plain; yet as our laws are, it is not what we call legal evidence: the parties concerned will make no confession, and we have not the methods used in all other countries, to extort confession from them. What then? Shall we see our king and country in danger, and do nothing for them? Shall conspirators go on with total impunity, only because they are obstinate, and artificially screen themselves behind the law? I doubt, my lords, that if this prove the case, we shall appear ridiculous in the eyes of all the world: that our friends and enemies both at home and abroad will think, that we have no zeal for the preservation of our king and government; and if once they do think so, your lordships cannot but be all sensible, how this must encourage our enemies and discourage our friends, and bring us into that contemptible state, in which no government was ever long supported.

But a noble lord has been pleased to observe, that the best way to serve the government, is to do popular things, and by that to procure the love of the people. I perfectly agree in this with the noble lord, and cannot but be humbly of opinion, that this government has done so, as far as it has been able: Our religion has been preserved; justice has been equally administered to all sorts of people;

none of our rights or liberties have been invaded; we have lived at peace at home, while many other countries have suffered all the miseries of war: these are, or I am sure should be esteemed, popular things; and if some other things, which might have been for the good of the people, have not been done, it has been the fault of those that complain most, and not of the government. And if there be discontents now in the kingdom, it is plain that the foundation of them was laid long ago, by the enemies to our present happy settlement: For I am persuaded, that the discontents were higher and greater within four months after the king came to England, and shewed themselves much more, in a number of rebellious riots and tumults, than any thing that appears at present; and yet nothing then could be objected to the government, but that some persons were not preferred, who both before and since have made it too plain that they were not fit to be trusted.

But as it is the duty of those in power to do all the popular things they can; so I must beg leave to observe, that it is the duty of all the subjects (and the greater they are the more it is their duty) to put the best interpretation upon the actions of the government that things will bear; not to misrepresent; not to put false colours upon things; and much more, not to invent lies and slanders, and disperse them up and down the kingdom, in order to alienate the affections of the people. These things have been done, and done with great care and diligence, and by some too, who would take it very ill to be called Jacobites. These are the chief causes of the disaffection among us, and indeed of all the real grievances we labour under. Is the king forced to put the nation to charges, to keep up a greater number of forces than otherwise would be needful? It is entirely owing to this cause. Are our debts not paid? Is our credit not so good as we would be glad to have it? Let this artificial raising of discontents once cease, and these things will quickly mend of themselves. Indeed, were this a time for it, I think it might plainly be proved, that the debts we labour under had never been contracted, but for this absurd, discontented humour; Nay, it is to this, that we intirely owe the danger we are in from this very plot; for it is plain, from all the intelligence we have about it, that it was carried on upon the confidence, that all discontented persons were Jacobites: And though the conspirators did in this greatly deceive themselves; yet it is certain that they built their hopes upon this foundation.

But it is further said by the same noble lord, that this extraordinary way of proceedings will not procure friends to the king; but will rather anger and provoke, and so hurt his interest instead of helping it.

To this I answer, that I do indeed suspect, that many people will be angry; as I hear that the Jacobites through the kingdom are: A plain evidence this, that they do not think that the friends of king George are worrying one another; for they would not be angry at that. Those that most desire to destroy our liberties, are become, upon this occasion, the great patrons of liberty; as indeed they have been in a great measure ever since the Revolution, when any thing has been proposed for the support of the government. No sooner were their schemes of arbitrary power in the time of king James overturned, and a new government settled which they did not like; but they, in order to destroy it, set themselves against every thing that was necessary for its defence, under the colour of liberty; that is, they desired to have their own hands as loose as possible, to hurt it; and the hands of the government as much tied up as possible, that it should not be able, either to hurt them, or defend itself. Thus at present, they clamour against the additional forces, though established by parliament; and against all methods, either to discover or punish the conspiracy. And they judge right in this for their cause; because, if they could have carried these points to their mind, they might then be more free in carrying on their plots, and with less danger put them in execution. For these reasons I take it for granted, that all these people will be angry; but I cannot but humbly be of opinion, that it is much better they should be angry with us for defending ourselves, than that they should first sneer at us, as fools, for neglecting our defence; and then be able more easily to undo us.

As to others, that possibly may be displeased at what we are now doing, I would hope, that a little time and consideration will set them right, and convince them, that it is not only just, (but all things considered) necessary to be done; because, if the parliament do, upon this occasion, shew their zeal in the defence of the government, it will animate and give courage to the friends of it both at home and abroad. Foreign powers will be apt to court the friendship of a prince, at the head of a mighty kingdom; if they see, that he and his posterity are like to continue there: All the affairs of the kingdom, which respect them, will be managed with more ease, with more honour, and with less expence; and they will be inclined, not to foment but to discover plots, if they came to their knowledge. But, on the contrary, if we give them any reason to suspect that we look another way, they will quickly do so too, and strive which shall be forwardest to help the Pretender to involve us in blood and ruin. And as to the subjects at home, I would only observe, that all mankind are apt to shew most zeal for a government, when they think it safe, and like to stand, and be able to protect them: But to suspect the contrary is a most dangerous temptation to the fidelity of subjects, as has been seen by the experience of all ages. And therefore I hope, that your lordships will, by your unanimity and zeal in this matter, effectually convince the world, that the danger does and shall lie in opposing, and not in defending the present government.

I hope that what I have now been saying, has convinced your lordships, both of the justice and prudence of this Bill; give me leave to observe, that your moderation has been very great too, both in giving so full and fair a hearing, and in making the penalties so much less than the crimes deserve.

It is now above a year since the plot was first discovered: a plot of a most desperate nature, to seize the persons of the king and prince, and to bring in a Popish Pretender upon us. The execution of which was to be begun by seizing the Tower, and attacking the city of London on all sides; and was thence to spread itself into all parts of the kingdom. Lord! what confusion; what murders; what plundering; what burnings must this have caused? Whatever had been the issue, the very attempt must probably have occasioned the sacking and burning of this great city: The utter loss at once of all public credit: The murder of infinite numbers of people: The astonishment, and amazement, and undoing of almost all, but of those vile wretches who would have had the plundering of all sides. If it had gone on, how many of the noble lords that I now see, would have been before this in their graves? But I forbear going any further in this tragical representation, and desire only to observe, that though it has been discovered above a year, how very little of it we yet know; and I do appeal to your lordships' consideration, who know the state of the world very well, whether there be any country in it, either bond or free, which, had they discovered but a fifth part of what we know of a plot of this nature, would not in a week's time have found means to get to the bottom of it. However, my lords, I still commend your moderation; and do hope, that we shall never find reason to repent of it, and that this little which is now doing, will be a warning to conspirators, not to provoke further the patience of an injured nation.

I doubt not but upon this, and all other occasions, your lordships will be ready to stand by a wise, a good, and a merciful prince; and that you will, according to your oaths, defend him against all treasons, and traitorous conspiracies whatsoever.

And, in the last place, give me leave, as a Christian and a Protestant bishop, to hope you will do your best, that a Popish Pretender may never be set at the head of this Protestant Church: One, who must think himself bound in conscience to destroy it; and instead of that pure religion which we now enjoy, bring in horrible superstition and idolatry, nonsense and tyranny; attended with all the sad calamities which Popish princes always have brought, and always must bring upon Protestant countries.*

After whom the Duke of *Wharton* spoke as follows:

Some words which have fallen from the reverend prelate, who spoke last, have made it,

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Gibson bishop of Lincoln. This I conjecture should rather be London, as it appears by the Lords' Journal that Gibson took the oaths as bishop of London on the 6th of May, after which no bishop of Lincoln appears to have attended the House until December 10, 1723, on which day the House met merely to be prorogued. On the next meeting, January 10th following, it appears that Reynolds, Gibson's successor in the see of Lincoln, took the oaths.

But it seems Hoadly (at that time bishop of Hereford) under the signature of Britannicus, published in the London Journal several papers respecting these proceedings against Atterbury and his associates, of which papers thirteen were, in this same year 1723, republished, (they are also inserted in the folio edition of Hoadly's works) in a thin folio, with the title of "Remarks on the late Bishop of Rochester's Speech, at the Bar of the House of Lords, being a collection of all the papers published in the London Journal upon that occasion by Britannicus." They are written with much acuteness and cogency of argument, and with unsparing hostility towards Atterbury. The concluding paper will exhibit the style of composition which pervades the whole. It is as follows:

"Upon the Review of the late bishop of Rochester's defence of himself from the charge laid against him, an observation or two offer themselves, which I cannot forbear to dwell a little upon, before I quite take leave of the subject. The first which occurs is, "that guilt can sometimes transform a man of the brightest parts into one of the opposite character; and put the witty and ingenious upon the level with the dullest and heaviest of mortals." If we were to comprehend the whole of the late Bishop's answer, in the shortest compass, it might be all rightly expressed in the one single word, 'forgery,' repeated over and over again, and applied equally to every particular. For instance—Q. What account do you give of the three treasonable letters, which plainly describe you, as the person who dictated them? Ans. Forgery between a great minister and another. —Q. How can this be, when it appears the other person was not known to that great minister, till three months after these letters were intercepted? A. Forgery notwithstanding this seeming impossibility.—Q. How came they to be written in Mr. Kelly's hand? A. Forgery. If they were so, it is very well known that there has been such a thing as an exact imitation of another man's hand.—Q. How came an answer to these letters from abroad, to be received here? A. Forgery. It was contrived so. The answer was first made here, and sent abroad, in order to be intercepted when it should come back.—Q. But how is this possible, when Mr. Kelly, whom you still treat as your friend,

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* Besides Willis, the only bishops who are mentioned in the Parliamentary History as taking part in this debate are, against the Bill Gastrell bishop of Chester; and in favour of the Bill,

in some measure, necessary for me to trouble your lordships with the reasons that induced me to differ with him in opinion, and to give my negative to the Bill now depending before us.

If I don't misunderstand his lordship (and if I should mistake his meaning, I hope he will set me right) he was pleased to say, that persons without doors would be apt to cast different reflections on the particular behaviour of every lord this day: That those who were for

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called for one answer himself, and ordered a friend to call for others? A. Forgery. This is my answer still, without thinking myself obliged to account for all difficulties.—Q. How came the letter directed to Dubois, to be found in your custody? A. Forgery again. They, who found it there, know best who ordered it to be brought thither.—Q. How could it be forged by those, who, as you yourself observe, did not at first know what use to make of it? A. Forgery, I insist upon it.—Q. But how come it to have the same seal, which was afterwards upon a letter acknowledged by yourself to be your own? A. Ministerial forgery. I can give proof that there has been such a thing, heretofore, as forging one seal from the impression of another. This is my answer.—I will not put any more questions, since we are sure that the answer to them all, (were they ten times stronger than those already named,) would begin and end in nothing but the same sound, forgery.

"Can any little genius, from this time, ever want a reply to the most perplexing difficulty, when so great a genius has, in his own example, shewn the easy expedient of having one and the same word constantly at hand? What accusation can ever hereafter touch any mortal of the lowest form, when a person of exalted talents has taught him to think it sufficient to elude every part of an accusation, by the repetition of a single word, which requires neither parts nor learning either for the invention, or the sounding of it? But, instead of envying the happiness and the irresistible force of such a standing plea; who can forbear to wonder that a person endowed with such a fruitfulness of invention, and such a nimble vivacity of parts; and now lately so celebrated for unparalleled abilities, could content himself with so vulgar, so unvaried a reply to every thing; and stoop his great soul to a method, which lies so open to the meanest understanding. Take any layman of the most ordinary capacity; and he may, upon the like occasion, eternally cry out, forgery, forgery. Nay, (what is perhaps lower in the opinion of some) take any one of those now left behind upon the bench, with capacities as mean and contemptible, as the wickedest or wittiest of this great man's advocates have lately invented for them, in order to raise their hero's distrest character, and help his distrest cause.—Take such an one, and put him into their idol's place; and try him with the same questions, and see if he could possibly answer such a charge with a less ingenious, or a less happy variety of expression, than this miracle of wit and oratory and poetry has done?

"But why do I mention that bench, unless to bewail it? Unhappy bench! if the paintings bestowed upon it by some late hands be natural and just—"Unhappy bench! abandoned by all the graces, and the muses, at that moment when the late bishop of Rochester removed from it! Unhappy bench! forsaken now by all the wit and politeness which once adorned it!"—But as these strokes of satire have fallen upon it, for virtue and our country's cause, all we of the laity, who love virtue and our country, will rather say, let the charms of wit, and song, and epigram, perish, when justice makes its demands.—And let it be an eternal glory to that bench, to have joined in the open detestation and punishment of knavery, dissimulation, perfidy to God and man, falsehood in word and deed; and perjury, the deepest of crimes against religion as well as society. If such a conduct has led the enemies of the public to speak meanly of them; I hope, and dare say, there is not one of them, who is not ready to reply, "that he had much rather be represented by such, and upon such an account, under the lowest of characters; than to purchase the reputation of great abilities, at the price of ruin to his country, and scandal to his profession." That good man who now presides in the see of Rochester, has experienced, in a particular manner, the malevolence of witless infamy. He is above it all. And it is enough to say of him, what thousands in this city know to be true, that he never had (I will not say, a crime, but) a fault laid to his charge by malice itself, till he succeeded Dr. A. at Rochester; and that through his whole life his character has as far outshone that of another, (now only so much extolled by a few,) as the charity and humility of a Christian, the good judgment and sound learning of a divine, the exemplary labours and prudent conduct, as well as useful preaching, of a parish minister, exceed the turbulency of ambition, the flourishes of wit or poetry, the party-management of an heated brain, the flames of passion opposed, and the falseness of an aspiring spirit ungoverned by any thing but a mistaken cunning. If any thing of this seems too severe, let them answer for it, who could find no other way of raising their great man's character, but by depressing that of greater and better; or of paying their honours to him, without scattering abroad their infamous abuses upon others.

"I return from this short digression, to the observation which led me to it. And if any one now ask, how it came to pass that no defence remained to a man of uncommon invention, and abilities, but the one repeated excuse of forgery; there can be but one answer to this, viz. that guilt alone could be, and therefore was, the true cause of it: Guilt,—which enervates all the powers of wit and eloquence:—Guilt, which can bring down the brightest to the

the passing of this Bill, would be accused of malice and partiality; and those who were of contrary sentiments, would be branded with disaffection to the present happy establishment.

For my part, I am far from thinking, that considerations of this nature will have the least weight with any of your lordships; and am very certain, that every one, who gives his vote

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groveling estate of the heaviest!—which can reduce a man of the finest fire, and sparkling ingenuity, to a condition little above that of the dull and stupid; and can force upon a superior genius the necessity of stooping as low, as the lowest of common mortals!

"But there is another observation, which has been continually present to my mind, through this whole transaction, and through every step of the late Bishop's defence. 'If he was resolved that forgery should be his one and only refuge, it cannot but be esteemed a certain mark of his guilt, that he never once charged any part of it upon Kelly; but, on the contrary, always seemed solicitous, upon every the least occasion, to declare his absolute freedom from all suspicion of that sort.' And perhaps, there may be more in this remark, than at first there seems to be. For thus stands the case. He was accused of high-treason, in corresponding with the Pretender, and the Pretender's agents. This correspondence was proved principally by letters written, and proved to be written, in Kelly's hand. Kelly was owned to be a friend and acquaintance of the Bishop's. The marks and characters in the letters were acknowledged by the Bishop, to point himself out pretty strongly. He often said, they must be written by one, who narrowly watched the circumstances of himself and his family. And the Lords, at whose bar he now stood, had before, by a solemn judgment, declared themselves satisfied that those letters were the hand-writing of Kelly. The plea then, which naturally offered itself to the late Bishop; and which must have had its due force, and that a very great one, if it could not have been disproved, was this: 'My lords, no one is answerable for letters, which another may take upon him to write in his character; unless he can be proved to have directed the writing of such letters. Were it otherwise, the most innocent men in the world would be the prey and sacrifice of the wickedest and vilest. These letters are proved to be Mr. Kelly's hand-writing: and you have so judged them to be. He was acquainted enough with me and my family, to know and find out, and mark those several circumstances, which appear in these letters to centre in me. I have had no part in them. I never dictated a sentence to him. I charge him with forging a correspondence in my name. At least, as your lordships have declared him guilty of writing this treason; I, who know my own innocence, have a right to rest my cause upon this, that he wickedly wrote them, and sent them away, and received answers to them, without my privity, or my bearing the least part in the whole. And I hope, I am not answerable for what he, or any acquaintance of mine, might forge in my name, to help their own cause, or to carry forward purposes of their own, utterly unknown to me.'

"In this indeed, there had been some sense, and I will add, some strength too; if Mr. Kelly could not have disproved it by a full discovery. And this lay so fairly in the way, that it could not have been over-looked, or avoided by an innocent man. But when the late Bishop, through his whole defence, was seen cautiously to guard against even every distant insinuation of this sort; nay, to appear angry, if ever the counsel for the Bill alleged that if these letters were forged, it must have been done by Mr. Kelly; and to cry out, No, no,—no one has any thought of that sort: when, instead of this, (which was the only natural plea,) the ministers were to be loaded with every part of the whole mass of forgeries, though in the very supposition absurd, and in the execution impossible; and it was all to be declared ministerial forgery, and nothing else—when this is the case, I say it must presently raise an enquiry, whence can this conduct proceed? whence could it be, that a person, who could not but see such a plea lie before him, should refuse all aid from that, and content himself with another; which is neither credible, nor possible, considering all circumstances? And with regard to this enquiry, I can neither find out, nor conceive, any other answer, but that guilt made the plea impracticable; that he knew that he was not innocent; and that he was justly afraid that, upon such a public charge against Kelly, his friend could not be silent, but must inevitably declare the truth.

"In return therefore, to that consummate sedate assurance with which Mr. Kelly had solemnly denied himself to have any such affairs as these with the late bishop of Rochester; that Bishop could do no less than avoid any the slightest insinuations against so gentleman-like a friend, who had out-faced truth in so handsome a manner, rather than hurt his principal. But not only this; (for this alone would never have prevented a criminal from making use of the only good plea in his way;) but his own danger made him reject it; and the evil consequences to himself from his making use of it, presenting themselves to his view, affrighted him from it. And that it could be nothing else, appears from hence. If the late bishop had known himself to have been perfectly innocent of all such dealings with Kelly; he had then nothing to fear from making use of that circumstance of Kelly's writing these letters, (already judged so by the Lords) to his own advantage; and pleading the great and crying injustice of his suffering for what another, a professed Jacobite, had written in his name, for the service of the Pretender's cause. And if Mr. Kelly had been angry at this, it was nothing to the prelate, (then upon his trial,

on this important occasion, has attended, with the greatest care, to the evidence that hath been given at your bar, which is the foundation of this day's debate.

The proofs that have been brought to support the charge, and the Bishop's defence, are to be thoroughly considered; and when your lordships proceed according to the rules of justice, you will not fear, nor value any consequences which may attend the discharging of your duty.

So far I will venture to affirm, that the best way to shew our zeal to his majesty, and the present government, is, to act in all cases, both in our judicial and legislative capacities, with that honour and impartiality, as ought to flourish in this great council of the nation.

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under a very grievous accusation,) who could receive no hurt from his displeasure, if his breast was free from all consciousness of guilt. But if he felt within himself the stings of guilt, the case was otherwise. For if he had accused Mr. Kelly of so gross a crime, as forging a criminal correspondence in his name, and to his destruction, unless detected; the gentleman, who in so composed a manner had utterly denied his own hand-writing, and in so friendly a manner, had gone out of his way to defend the late bishop more than himself, could not have borne an imputation of so much vileness, as that of forgery to ruin this great man; but must have been provoked, (and justified in it by all the world,) to have made the fullest discovery of the whole affair: and this must have ended in the utter confusion of his principal, though in nothing worse to himself than what was already decreed against him.

"And therefore, it may unanswerably be argued, guilt alone made the late bishop rather chuse the popular inflaming topic of ministerial wickedness, from which he hoped for some small chance of good to himself; than that other plea, from which (not being innocent) he had nothing to hope, but his own ruin, without redress, or apology. And, upon the whole,—he, who took not one of those methods of defence, which innocence could not but have taken;—he, who throughout his trial, chose those methods of defence, which guilt alone could make necessary, or plausible;—he, who had no reply to make, but what was always taken from a gross imputation upon ministers, which plainly appeared to be, in itself, contradiction, and impossibility;—such an one must be esteemed guilty; or else, (as I have had occasion to observe, in other parts of this cause,) invention and reality, truth and falshood, forgery and just evidence, must be accounted the same; and never be distinguished from one another, in all judicial affairs; which can end in nothing but first confusion, and then the total dissolution of all the bands of human society.* BRITANNICUS."

"Hoadley for a period of a mile." *Pope's Dunce.*

I could have wished the noble lords who have given their reasons for the passing this extraordinary law, would have entered into the particular circumstances of this case, and considered it singly on its own merits: But instead of speaking on that head, I cannot but take notice, that they have wandered from that (which ought to have been their only consideration) into learned discourses on Bills of this nature in general.

I shall not trouble this House with any arguments against attainders. Many lords, of greater weight and abilities than myself, have already spoke fully to this point in the preceding debates.

I shall only so far agree with the reverend prelate, who spoke before me, that it is proper, that such a power of punishing by Bill, should be vested in the legislature, to be exercised on extraordinary emergencies: But then I must add, if ever that power is abused: if ever it is employed to destroy innocent persons, it is evident, that the lives, liberties, and fortunes of every subject in Britain are in the utmost danger, and liable to be sacrificed to the fury of a party.

It has been admitted, that every Bill of pains and penalties is to stand upon its own bottom; and that the passing of one act of this nature, is not to be brought as a precedent for the supporting of another, unless there be convincing evidence to enforce each case. And therefore the proper consideration now before us, is, Whether the evidence offered against the unfortunate prelate, is sufficient to induce your lordships to believe him guilty of the heavy crimes of which he stands accused?

My lords, I shall take the liberty of considering the whole proofs that have been brought on this occasion, both by way of charge, defence, reply, and rejoinder; and though I own myself very unequal to this task, yet, since no other lord, who could do it much better, has undertaken it, I think it my duty as a peer, and as an Englishman, to lay it before your lordships in the best manner I am able.

The method I shall observe, for the more clear stating of the case, shall be to lay every particular branch of evidence before you, and to distinguish the several parts of the accusation, and consider them separately, to avoid confusion, and to be the more exact in what I have to offer.

I hope, I shall have your lordships' indulgence for taking up so much of your time as this will require: But I assure you, I shall endeavour to be as brief as the nature of the thing will admit, and will intrude on your patience as little as possible.

I must also desire your lordships will pardon me, if I repeat several arguments that have been used by the counsel at the bar; and if I even mention some things which fell from me in the debate on Mr. Kelly's Bill, whose case is very much interwoven with the present; so that it is almost impossible to avoid it.

Before I go any further, I cannot but say,

that were these crimes plainly proved against the bishop of Rochester, his sacred function and station in the Church would be aggravations of his guilt, but as this is certain on the one hand, so on the other, your lordships will require very clear demonstration, before you can think it possible for a bishop of the Protestant Church (who has signalized himself in defence of the Reformation, and the only one of that bench where he had lately the honour of sitting, that ever wrote in favour of Martin Luther) to engage in a conspiracy for introducing Popery and arbitrary power amongst us.

My lords, the counsel for the Bill opened the charge with acquainting the House, that it was only to be supported by producing of decyphered letters, full of fictitious names and cant words; they were so very fair as to confess, they had not one living witness that could charge the Bishop with any thing, nor even so much as a letter under his own hand; therefore, on the first view, this manner of condemning, on such kind of evidence, ought to require our utmost caution, lest we should establish a method, which our enemies may hereafter take to destroy the greatest and most innocent subject in the kingdom.

Mr. Wearg cited two cases, which he would willingly have us receive as precedents, to justify the admitting of circumstantial evidence: The one was the case of Ashton,* who was condemned on circumstances only. But, my lords, this was before the treason-act was passed, which requires two positive witnesses; and nothing could induce the legislature to pass that law, but a thorough conviction of the danger that might attend the admitting of any proofs which were not positive or certain.

The second case he cited, was that of Harrison† for the murder of Dr. Clench; and the learned gentleman tells you, that it was the pulling out of a handkerchief that led to the discovery of that murder. It is very certain, circumstances may lead to the discovery of evidence; but must be well supported before they can be converted into convincing proofs.

The first piece of evidence that was offered at the bar, was the extracts of letters from abroad, which this House seems, in some measure, to have declared to be immaterial, when they did not so much as desire to see copies of the whole letters, nor the originals; and even admitted one to be read which was anonymous. But it will not be improper to observe, that through this whole correspondence the bishop of Rochester is not named. And therefore I cannot see why they took up our time with reading papers quite foreign from this case: especially, since every body allows there has been a conspiracy, which is the only fact to be gathered from this correspondence.

The next point which was attempted to be proved, was, That captain Halstead went to fetch the late duke of Ormond,‡ and was at the deanery with the Bishop before he embarked. There are also two letters found in the Bishop's close-stool, from this gentleman to his lordship, which were read, and are only appointments for visits, but mention nothing of this design; and, I think, there was a coachman, that proved Halstead was an hour with him some days before he left London.

This, my lords, was opened as a matter of great importance: but your lordships must remember, that the supposed design of Halstead's bringing the late duke of Ormond into England, is only proved by hearsay. One of the crew belonging to the ship in which he went, has deposed, That it was the common report at Bilboa, that Halstead came there on that errand.

How far common fame is to prevail, I submit: but if this hearsay were true, is every person who was an hour with this gentleman before his departure, supposed to be privy to this project? And what a strained construction is it to insinuate, the bishop of Rochester knew of his intention, because he received a visit from Halstead, who was a tenant under his bishopric? And this is the more extraordinary, since it has not been so much as pretended that any correspondence has passed between the reverend prelate and the late duke.

They then produced letters directed to one Dumvill, which were decyphered. And Mr. Willes was examined to prove, that they were rightly and justly explained.

My lords, it very well deserves your lordships' consideration, how far this kind of evidence is to be admitted: it has appeared to your lordships by the oath of Mr. Willes himself, that it is an art which depends upon conjecture; for this gentleman has confessed, that every man is liable to a mistake in this, as well as in other sciences. He tells you, that he and his brother decypherer varied in one or two instances: he allows, that the chasms, which they were forced to leave in those letters, might alter the sense of them. And, therefore, I cannot but think, that an accusation grounded on such proofs, is uncertain and precarious.

The person who is the decypherer is not to be confuted, and what he says must be taken for granted, because the key cannot be produced with safety to the public; and consequently (if his conjectures be admitted to be evidence,) our lives and fortunes must depend on the skill and honesty of decypherers, who may with safety impose on the legislature, when there are not means of contradicting them, for want of seeing their key.

My lords, in the case of Coleman,* the key was printed, as has been well observed by the counsel at the bar; and I am very much surprized, that gentlemen of such abilities and integrity as the members of the secret committee (who, in another place, were so exact as to print the French originals with the translated

* See it, vol, 12, p. 645. † Ibid. p. 833.
‡ See his Case, vol. 15, p. 1008.

* See it, vol. 7, p. 1.

letters, that the world might see how just and candid the prosecutors of the plot were) did not for the satisfaction of the public, permit us to see the key in print, on the truth of which depends such a chain of consequences.

I own myself entirely ignorant of this art: but, as I should be very far from condemning a man on my own conjecture, I should much less do it on the conjectures of others.

The greatest certainty human reason knows, is a mathematical demonstration; and were I brought to your lordships' bar, to be tried upon a proposition of sir Isaac Newton's which he upon oath should swear to be true, I would appeal to your lordships, whether I should not be unjustly condemned, unless he produced his demonstration, that I might have the liberty of enquiring into the truth of it, from men of equal skill?

I cannot think any man will allow evidence of this nature to be good: but if in this case, relating to the decyphered letters to Dumvill, your lordships should admit it, there is nothing mentioned in them that can affect the Bishop, neither is he at all named in them, but they are only brought to prove the conspiracy in general.

The examinations of Mr. Neynoe are the next points that are laid before your lordships: and, indeed, I must do the gentlemen at the bar the justice of saying, that they forbore mentioning any thing of them when they opened the charge.

They were so sensible that such proofs could not have the least weight to affect the Bishop, that though in the case of Mr. Kelly they were produced against him, as very material to support that Bill, yet they did not think proper to name them against the Bishop; which, I am thoroughly persuaded is owing to what appeared at your bar by the examination of Mr. Bingley, and the universal opinion which every person seemed to have of the villainy of Mr. Neynoe's transactions.

My lords, these examinations were never signed by the person, neither was he ever examined to them upon oath: so that were they of consequence, and he a person of credit, they could not be admitted to affect any person whatsoever, in any court of justice or equity. I don't mean, that they could not be read according to the strict rules of Westminster-hall; which is admitted on all sides they could not: but I dare affirm, that no credit can be given to them on any account whatsoever.

The person was closely confined, and consequently in the hands of the government; so that he was at that time under the greatest apprehensions, which might, in some measure, prevent him from speaking truth, with that sincerity and candour of which every person ought to be master, when he is examined on matters of such nice nature.

Though these papers were entirely given up by the counsel for the Bill, yet the extract of them was read, and they are the visible foundation of this charge; and if they are insignificant, the whole accusation falls to the ground: for the whole proof of the Bishop's dictating to Mr. Kelly, depends on Mr. Neynoe's bare affirmation.

The whole of what Neynoe says, or is supposed to say, is, that Mr. Kelly told him he wrote the Bishop's letters for him: Mr. Kelly denies it, and Mr. Neynoe was so conscious that he had been guilty of many crimes, that he endeavoured to withdraw from justice, and the providence of God, it is said, intercepted him.

My lords, if you will consider the improbabilities of this evidence, although it were upon oath, and signed by him, it cannot be supported. He tells you, that he was entrusted to draw up memorials to the regent: yet none of those have been produced: and yet it is apparent the copies of them might with ease have been obtained, if he had been as thoroughly pressed to deliver them, as he was to declare he wrote them.

These memorials, he says, were wrote by the order of Mr. Henry Watson, whom he takes to be the late earl Marishall: and I am certain your lordships did not think that fact material, when you came to a Resolution, that the bishop of Rochester should not be at liberty to ask, if enquiry was made of the said Neynoe, or if he gave any satisfaction to the lords of the council, touching that important fact of Watson's, whom he took to be earl Marishall, lying with him several nights.

It was very well observed by a learned gentleman at the bar, that nobody can believe the late earl Marishall would have reposed so great a confidence in a person who was entirely a stranger to him, and of such little note; and the Jacobite party must be in a low condition, when they make use of such a creature to write papers of that importance.

There is so much improbability in this and other points, and so much contradiction in several parts of his examinations, that they appear to me, and must to all reasonable men, as the dictates of fear, and not agreeable to truth.

He mentions, that the reverend prelate (for such I still may call him) had some favours offered him by the court; but that cannot be true, and must be added to the rest of these absurdities.

But, my lords, what in my opinion clears up all these matters, and makes it impossible for me to give the least credit to this, or any other part of the charge, are, the several testimonies of Bingley, Skeene, and Steward.

I must observe to your lordships, that the two first persons, Bingley, and Skeene, are actually now in separate custodies; and consequently could have no communication one with another. The third is at liberty; but his testimony is so thoroughly supported by Mr. Gordon and Mr. Kynaston, that no doubt can arise as to the veracity of it,

These gentlemen, who are in the hands of the government, are under hopes and fears; and therefore, it is certain, when they speak a

language, which perhaps may be disagreeable to those on whom they at present chiefly depend, it must be the spirit of truth that prevails.

Mr. Bingley was before us in the case of Kelly, and was also examined at the bar of the House of Commons, though not upon oath; and though he has been more severely treated, as he told your lordships, and more strictly confined since his first examination, yet he has persisted in his story: and though he was so long at your bar, and so many questions put to him, yet he never varied in any one circumstance, but appeared consistent through the whole course of his behaviour.

I shall not detain your lordships with recapitulating his whole evidence, for I did it very fully on a former occasion. But your lordships will remember, he told you, Neynoe abounded in money, which Neynoe said, (after he was apprehended at Deal) an honourable person (and on this occasion, I hope, I may name him), Mr. Walpole, gave him: and more particularly, he mentions 60*l.* which Neynoe said he received the night before he went to France.

Bingley told your lordships, that Neynoe had assured him, he used to meet this honourable person in the Stable-yard, at Chelsea: and, my lords, the errand on which he was going to France, was, to discover some secrets relating to cyphers, which he would have engaged Bingley to have done for him; and particularly, to get them, if possible, out of Mr. Kelly, which, he said, could he obtain, would be of great advantage to him.

That Neynoe had declared to him, he would be even with Mr. Kelly, before he was aware of it, or words to that effect: and that Mr. Kelly always seemed averse to any acquaintance with Mr. Neynoe, of whom he entertained a mean opinion.

That Neynoe's father refused him money; which makes it highly probable that his poverty was the occasion of his villainy: and that when he was taken at Deal, he had declared to him, Mr. Walpole expected to find the plot about him; and since Mr. Walpole could not, he must make one for him.

Neynoe told Bingley, that this honourable person had vowed destruction to the bishop of Rochester, by saying, He would pull down the pride of this haughty prelate; which is sufficient to convince your lordships how little regard ought to be had to the hearsay evidence of so false a wretch.

Mr. Bingley says, that part of this account he had given to the lords of the council: and I could have wished, that his examination (as well as some others to the same purpose, which were taken about the same time) had been laid before the parliament.

Mr. Skeene, who is also in custody, has deposed, that he lay in the same house with Neynoe, and had some conversations with him.

That Neynoe had told him, what he had said of the bishop of Rochester was entirely false. And,

That Mr. Walpole had offered him a considerable annuity to turn evidence; and had given him instructions, before he was called in to the Lords, what questions would be asked him, and what answers he should make, and threatened him with Newgate if he would not comply.

Skeene says further, that Neynoe swore (and I hope the reverend bench will, in such a case, permit me to repeat the words), by God, there were two plots; one of Mr. Walpole's against the protesting lords, and one of his to bite Mr. Walpole of money: and this seems to be the only time that ever Mr. Neynoe averred any thing upon oath.

To convince the world, what a creature this Neynoe was, he tells Skeene further, that once at lord Townshend's office, he had a great inclination to have stabbed the chancellor of the exchequer. He tells you, that Neynoe had wrote a paper to declare, that all he had said of lord Orrery was false.

My lords, the next witness was Mr. Steward, who was unfortunately in custody, when Neynoe was brought to town from Deal.

Steward says, That he slept the second night with Neynoe: that Neynoe had told him, what he had said of the Bishop was false; and that Mr. Walpole had offered him a great sum of money, if he would swear to what he said, and turn evidence, which he declared he could not do.

That Mr. Walpole had taken him into another room before he was examined, and told him what questions he would probably be asked, and what answers he should give.

He says, that Neynoe told him also, that he had like to have killed Mr. Walpole, and so put an end to the plot: and that Mr. Walpole had given him a paper of directions, which he was to answer, in order to be a witness against the protesting lords.

As a confirmation of his testimony, Steward says, He told this to Mr. Gordon before Mr.. Neynoe was drowned, and to Mr. Kynaston before the meeting of the parliament.

Mr. Gordon confirms this part of his evidence, and assures your lordships, that he had heard it from Steward before the death of Neynoe. And Mr. Kynaston, a gentleman of an undoubted character, lately a member of parliament for Shrewsbury, has assured your lordships, that he was acquainted with Steward's account of Neynoe before the meeting of the parliament: and adds this circumstance, that when in the Appendix he saw those six questions printed, he shewed them to Steward, who seemed rejoiced, and said, You see, Sir, what I told you is true.

Such concurring testimonies from persons kept so separate, and who are speaking against their own private interest, must have the greatest weight, and must at least prevent any rational and impartial person from giving the least credit to the bare hearsay of this Philip Neynoe.

If any doubt could remain, as to the validity

of this testimony, it is sufficiently confirmed by the persons brought to disprove it.

The Chancellor of the Exchequer himself does not pretend to deny that Neynoe told these things, but only adds other circumstances to convince you of Neynoe's villany, and assures you that at the time he was receiving favours from him, he was thoroughly convinced he intended to cheat him, which was the occasion of his being apprehended.

He owned the transactions between them before Neynoe went to France, and particularly the money mentioned by Bingley; which are proofs that Neynoe must have disclosed these secrets, since they could not come from Mr. Walpole; and he and Neynoe only were privy to it.

Mr. Walpole has shewn your lordships the foul draught of the questions mentioned by Steward; and when he denies that part of Neynoe's declaration relating to the instructions given him before the examinations, he owns, he was twice alone with him; once the first night of his being brought to town, and the second time, when he gave him the paper of directions, which might be foundation enough for Neynoe to frame so notorious a falshood.

The witnesses brought by the counsel for the Bill, to the character of Mr. Bingley, seem rather to confirm it than otherwise; and all agree, they never heard any thing against his morality. They indeed have said, he bore the character of a Jacobite; and suffered for having dispersed a libel: But Mr. Baron Gilbert, who was his judge when that punishment was inflicted on him, has told your lordships, that his private life was not vilified at his trial, and that neither perjury nor forgery were ever laid to his door.

Though the punishment he suffered was the pillory, yet it is the crime, and not the punishment, that makes the ignominy; and for this I can appeal to the learned judges.*

In order to destroy the evidence of Mr. Skeene, they produced one Pancier, who tells you, that Skeene had revealed many secrets to him relating to the plot; and particularly of a military chest, which was collected to carry on these supposed designs, and support the Jacobites. But I presume every body who heard the two persons at the bar, could not but remark the steadiness with which Mr. Skeene denied these asseverations, and the confusion with which the other affirmed them.

Mr. Pancier seemed to drop something which entirely destroys any credit that could be given to him, by saying, that he had owned to Mr. Skeene, that he was a friend to this administration; and yet has sworn, that after such a declaration, Skeene had still persisted in his story, and revealed some part of this intelligence to him. How far this is probable, your lordships are the best judges.

Mr. Pancier goes further, and tells you, that part of this conversation happened in St. James's Park, in the presence of one Dufour. This Dufour was in the hands of the government; and I cannot conceive why we have never seen him or his depositions, when it would have been so easy to have brought this corroborating witness to Mr. Pancier's testimony.

I cannot but think, that the not producing this man's evidence, is a strong circumstance to convince your lordships he did not agree in the same story with Mr. Pancier.

They also produced Skeene's attainder for the Preston rebellion: But there have been many acts of grace since, so that he is capable of being an evidence: and there has nothing appeared to traduce his character as a man of morals.

In order to shew your lordships, that Neynoe could not possibly make these confessions to Mr. Skeene and Mr. Steward, the counsel for the Bill maintain, that they will prove Neynoe and the prisoners were not together after the first night.

This, my lords, would be very material; but I think it appears, by the proofs brought to support this assertion, that they frequently have conversed one with another.

The first witness they called, was Mr. Crawford the messenger, in whose house the prisoners were in custody; and, my lords, I cannot but say, it seems very odd, they should bring a man to swear he had done his duty: He has told your lordships, that lord Townshend had given him orders, that Neynoe should be close confined; and if, after that, it should appear, that he had neglected such directions, there is no question, but that he instantly, and deservedly, would have been removed out of his employment.

This messenger, in this situation, tells you, that after the first night they never conversed, to the best of his knowledge: That Mr. Skeene called Neynoe a rogue of an informer; and spoke in very hard terms of him; which I indeed think it appears the fellow well deserved.

Crawford says, that Mr. Neynoe had some paper, two sheets of which he found missing. He likewise swears, that Mr. Steward lay upon the stairs; and owns, he had at that time two servant-maids.

Mrs. Crawford, his mother, swears, that to the best of her knowledge, the prisoners were never together: That she kept the keys of the rooms herself, but used to send up the maid, Hannah Wright, with the dinner.—Your lordships will observe, that both this woman, and her son swear to the best of their knowledge only, and are far from positive witnesses.

Hannah Wright, when she was first called, spoke in the same language with them, though she afterwards recollected herself better.

When the Bishop came to rejoin, Francis Wood, Thomas Wood, and Mr. Russel severally say, that this Hannah Wright had declared to them, that she used to let the prisoners converse together whenever she had an oppor-

* As to this, see Peake's Law of Evidence, chap. 3, s. 2, Hargr. Co. Lit. 6. b.

tunity, which was when Mr. Crawford and his mother were out of the way; and that she used to stand upon the stairs and give notice when any person came, that they might retire into their several rooms. And the other maid, whose name is Christian, has deposed, that Hannah gave the key of Neynoe's room to Steward, and several times desired Steward to go up to him, and that they were together an hour or more. And when Hannah was called a second time, she owned she was turned away for suspicion of having helped Neynoe in his escape; that she has left Skeene's door open, who lay near Neynoe; and that there was a large hole in Neynoe's door, through which they might converse.

She said, that Neynoe gave her a paper, which she was to convey for him; but that it was taken out of her bosom, and burnt by one of the prisoners.

When Mr. Steward said, that he sat upon Neynoe's bed the second night, and lay in the garret where there was a partition, but a communication between them, Hannah said, she could not be positive to that, but believes it true.

Mr. Crawford, when he was called to that point, according to his usual custom, denies it to the best of his knowledge.

Your lordships will now judge, whether the greatest credit is to be given to the belief of a messenger and his mother, who are swearing that they did their duty: or to the positive oaths of Skeene, Steward, Gordon, Kynaston, Francis Wood, Thomas Wood, Russel and Christian, confirmed by the confession of Hannah Wright, when she came to be cross-examined and confronted.

This, my lords, concludes what has appeared at the bar, relating to Mr. Neynoe and his transactions; and I am pretty certain, every impartial body must agree with me, that so far from giving the least credit to what he says, there have appeared such circumstances in the transactions which are now come to light, that must make the greatest caution necessary, before we believe any other part of the charge.

Your lordships will take notice, that Mr. Crawford confesses Mr. Neynoe had the use of paper, and found two sheets missing; and Hannah Wright owns she had a paper from him, which was burnt by one of the prisoners. This, my lords, undoubtedly was the paper relating to lord Orrery, mentioned by Skeene in his evidence.

My lords, I am now coming to the great and only foundation remaining to support this Bill, viz. Neynoe's examination: for if his hearsay is not to be believed, which is the proof that was offered to shew that Mr. Kelly was the Bishop's secretary, and used to write for him; and particularly, that the Bishop dictated three letters, which were wrote in Kelly's hand, and transmitted to France under cover to monsieur Gordon le Fils;

Then as every body must agree, the Bishop ought to be acquitted; and when hereafter this great affair comes to be canvassed by posterity, it will stand or fall as this fact shall be strongly made appear.

They first read Plunkett's cypher, and Mr. Vanradike attests it to be his hand-writing.

When this piece of evidence was offered, people were at a loss to know what they intended to make of it, and little thought that they should be drove to make use of Jackson, standing for the Pretender in that cypher, to shew that the letter directed to Jackson (one of the three before mentioned, affirmed to be dictated by the bishop of Rochester to Mr. Kelly) was to the Pretender. I shall take notice of this extraordinary proceeding when I come to consider those letters: I shall only say now, that were Mr. Plunkett's correspondence to be regarded, the plot is of a very deep nature; for he has had the impudence to insinuate the most ridiculous aspersions against the greatest men amongst us.

Three of his letters were read out of cypher, in two of which Mr. Johnson is named, that is Mr. Kelly; but neither Mr. Kelly, nor the bishop of Rochester, are allowed places in his cypher, and consequently were not in an association with him. Johnson is only spoke of by Plunkett, when he is mentioning domestic news, and in no other than might be in every news-letter that went by the general post.

My lords, in order to shew that the three letters sent under cover to M. Gordon le Fils, were Mr. Kelly's hand writing, which they very justly thought was necessary to be made appear before they proved that the Bishop was concerned in them; they produced a letter of the 20th of August, which a clerk of the post-office swears was stopt at the general post-office.

To convince us this letter is Mr. Kelly's writing, Hutchins the messenger says, to the best of his knowledge it is Mr. Kelly's hand; and at the same time owns, he never saw him write till after his commitment, and then he stood by him while he wrote two letters, one to lord Townshend, the other to Mr. Delafaye; those letters were produced at the bar, and therefore every lord in the House is as good a judge of the similitude as the messenger, who has lately been restored into favour; on what account I cannot tell.

If Mr. Kelly, during his confinement, counterfeited and disguised his hand, then the messenger's evidence cannot be of any weight; and if he wrote as usual, then every person is equally capable of framing an opinion of it, who sees the three letters.

The next witness is Malone, who swears, he has seen him direct letters, but can't tell how long since he saw him write, nor how often.

The persons who contradict this evidence are so positive, so clear, and so concurring in their testimony, that no doubt can rise upon it.

Mr. Bingley, when he was shewn this letter, swears it is not like his hand-writing.

Mr. Brown, a peruke maker, well versed and acquainted with his writing, when he was shewn the letter of the 20th of August, and the

date of it hid, by the counsel for the Bill (so that he could not know what paper it was before him) swears, it is not his hand-writing. When the letter to Delafaye was produced, he declared, that was his hand-writing: when another paper was shewn, (I think it was the marriage articles) he said, that was more like his hand writing than that of the 20th of August, but he did not believe it was wrote by him; and when they questioned him upon the letter to lord Townshend, he swore it was Mr. Kelly's hand-writing.

Mr. Pickering, who had occasion to know Mr. Kelly's hand, having lent him some money, and received several notes and letters from him during that transaction, does agree with Mr. Brown in every particular and most minute circumstance; which is a clear and evident proof, that this letter of the 20th of August was not wrote by Mr. Kelly.

The difference which they tell your lordships they observe, between the cut of the letters in that of the 20th of August, and the others, is, that one is longer and straiter, the other wider and shorter: which is obvious to any body that will look on both, and is a confirmation of their veracity.

The prosecutors of the plot might have proved this better, and not have been driven to the testimony of a messenger to support this great foundation of their charge, It is notorious what search they have made for evidence of all kinds; and as Mr. Kelly was educated in a college, they might easily have found credible witnesses to that point, if those letters had been wrote by him.

In the case of similitude of hands, when it has been the most clearly and positively proved as on the trial of colonel Sidney, it has been esteemed to be cruel, that a man should be convicted on such kind of evidence; and the attainder of that unfortunate gentleman was reversed for that reason.

In Sidney's trial, his bankers swore, they used to pay bills drawn by him in the hand-writing they were shewn, and no persons could contradict them; and yet the sentence against him was a great blemish to that reign.* The great lord chief justice Holt, in the Case of Crosby†, refused to admit it; and the lord chief baron Bury, on Francia's Trial‡ followed that example.

At present, give me leave to say, there is no evidence that it is Mr. Kelly's hand, and there is positive proof that it is not. Therefore, we who live under so equitable, just, and happy a government, can never convict a man, in these days of liberty, on such insufficient conjectures.

They next produced the three letters, which, they would insinuate, were wrote by Kelly, and dictated by the Bishop, which were mentioned by me before, and which were sworn by the clerks of the post-office to have been stopt going to France.

The Bishop desired to examine them relating to these letters being detained, and would fain have known who took them out of the mail: this he thought was proper for him to demand, since he seemed to insinuate, that he questioned their ever having been in the post office. But your lordships would not suffer any enquiry to be made on this head, and voted it inconsistent with the public safety, and unnecessary for the defence of the prisoner, to permit any further questions to be asked in relation to this important affair.

These honest gentlemen, the clerks of the post-office, have deposed further, that the papers produced, are true copies of the originals detained by them; though, at the same time, they confess, they never examined them after they had copied them.

They positively swore further, that the originals were of the same hand with the letter of the 20th of August, though they affirm this barely upon memory, never having marked any letter in order to know it again: and one of them declared upon oath, that he did not believe there could be such an imitation of Kelly's hand as could deceive him; though the whole House agrees, that hands may be counterfeited so as to deceive the men that wrote them.

They own, they never compared two original letters between the 20th of April, and 24th of August, though they might have stopt a letter one post, without prejudice to the government, in order to be more certain in their evidence.

Thus, my lords, should this Bill pass, this great man must fall by the dependance this House must have on the memory of these clerks.

Mr. Lewis, who has long served in the secretary's office, tells us, that frequently letters and seals used to be counterfeited: and, in a more particular manner, by one Brocket, who excelled so much in this art, that he has cheated many persons, and has so far deceived them, that they have not known his copy from their own originals.

When these letters, thus attested, came to be read, they are in cypher; so that it must again depend on the honesty of a decypherer, before they can possibly be made treasonable.

Mr. Willes declares, they were truly decyphered according to the best of his judgment and skill; and more particularly, that the number 1378, which is subscribed to the third letter directed to Jackson, stands for the letter R. But when some lords asked him a question, which, perhaps had he answered, might have proved him to be under a mistake; he refuses to give an answer, either in the affirmative or negative, for fear of revealing his art; your lordships thought proper to prevent any further cross-examination of this gentleman, by a Resolution.

Mr. Willes says, he shewed these letters decyphered to my lord Townshend, before he

* As to this see vol. 9, p. 864.

† See his Case, vol. 12, p. 1291.

‡ See his Case, vol. 15, p. 898.

communicated them to Mr. Corbire, who is a clerk in the secretary's office, and then he says, that Mr. Corbire and he agreed.

Before these letters can yet prejudice the Bishop, the cant names in them must be explained, according to the key which the prosecutors of the plot have made; and in order to it we must believe that Jackson stands for the Pretender, because Mr. Plunkett gave him that title in his cypher. Can there be a greater absurdity, than to imagine a person of the bishop of Rochester's capacity, should borrow a name of that consequence, from so insignificant a wretch as Plunkett, who it does not appear ever saw him?

Indeed, the counsel for the Bill did not read these letters against the Bishop, since they had no proof of his dictating them, and they were only read on account of the general conspiracy.

I must observe, it was a great artifice of these learned gentlemen, whenever there was a piece of evidence to which the Bishop objected, they constantly pretended, they produced it to the plot in general; for they knew it could not be admitted against the reverend prelate: but yet, when they came to sum up, they applied them to this particular case; which is not agreeable to that candour that is necessary on such occasions.

If your lordships should be of opinion, that Kelly wrote them; that they were stopped at the post-office; that they were duly copied; that they were truly decyphered, and the cant names explained; yet still this cannot affect the Bishop, unless it be fixed upon him that he dictated them: two of them were signed Jones and Illington, and to induce your lordships to believe the Bishop was guilty, as they affirmed, they endeavour to prove those names must denote him. And, in order to it, they read some letters, affirmed in the same manner, (as beforementioned) by the clerks of the post-office, to be his handwriting: but first they read a cypher taken upon Mr. Dennis Kelly, and sworn by the messenger Hutchins, to be wrote by George Kelly.

I can observe nothing upon this cypher, but that the bishop of Rochester is not mentioned in it; which seems very extraordinary, and is not a proof of the reverend prelate's being in a conspiracy.

The letters they read of Mr. Kelly are of no moment, and are only calculated to fix the names of Jones and Illington upon the Bishop.

They give an account of his lady's death, the Bishop's own illness, his going to and from Bromley; and, in some of them, the dog Harlequin is mentioned.

It seems repugnant to reason, that in a treasonable correspondence of this importance, a gentleman should venture his life to give an account of the state of one person's private affair, and entertain his friends abroad with no other business in such a tract of time.

In the letters directed to Mr. Andrews, at the Dog and Duck, which are proved to have been received by Mr. Kelly, Jones and Illington are not named; and those in which we find them, were such as passed through the post-office, and were attested like those under cover to Gordon le fils.

It is not likely, that, in a transaction of so secret a nature, Mr. Kelly should take such pains to give such a description as might give the least room for a suspicion that the Bishop was concerned; much less to have mentioned so many particulars, as it may be suggested he has done, if there could be any possibility of wresting the meaning of Jones and Illington, and interpreting of them to mean the Bishop.

William Wood, the Bishop's coachman, is brought to prove the particular times of the Bishop's being in or out of town, in order to shew that they agree with the times mentioned of Jones and Illington in the intercepted correspondence; and he refreshes his memory by a book of memorandums, which might have been destroyed, if it had been apprehended, by the Bishop's friends, that such evidence could affect him.

What they next attempt, was to shew, that the dog brought over by Mr. Kelly from France, and which Mrs. Barnes swears, that he once told her was for the bishop of Rochester, was a strong circumstance to fix the name of Illington on the Bishop.

My lords, Mrs. Barnes, who is under the custody of a messenger, is the only witness to this point; and what she says, is only hearsay from Kelly: she owns that Kelly never told her so but once, and that was when she thought to have kept it for herself: and, indeed, it might be barely an excuse to prevent his parting with it, for he had promised to bring her such a present before he went to France.

She owns, that to her knowledge, the Bishop never saw the dog, nor sent any message about it; which seems to be very extraordinary, that if this present was of such great consequence, he should not have had curiosity enough, at least, to see it: an affidavit was read from Birmingham, a surgeon in Paris, which says, that he gave this dog to Mr. Kelly, for Mrs. Barnes.

Before I leave this circumstance of the dog, it is proper to observe another great improbability, which is, in a letter wrote a few days after the death of the Bishop's lady, it is said, Mrs. Illington was in great tribulation for the loss of poor Harlequin; and can it be supposed, that at a time when the Bishop was in affliction for the death of his wife, he should indecently discover so much grief for such a trifle?

I think this is sufficient to convince any person whatsoever, that this correspondence is of a very extraordinary nature.

Mrs. Barnes has told your lordships, that Mr. Kelly came from France the 11th of April.

My lords, I am now come to the only piece of evidence that seems particularly levelled at the Bishop; which is, the proof that has been given of the dictating those letters; and unless this be clearly and plainly made appear, I can-

not conceive that any thing can be laid to this prelate's charge.

Unless it is evident, that the Bishop did dictate as alleged, I cannot think any of your lordships can vote him guilty according to the rules of justice; for no man is safe either in his life, liberty or fortune, if he may be deprived of either, on account of a correspondence in which it does not appear he was concerned. Though your lordships should so far credit the precarious evidence at your bar, as to believe that Jones and Illington stood for the bishop of Rochester; yet unless it is plain that it was with his privity, it is certainly impossible this Bill should pass: and if it should, it will hereafter be in the power of any two men, one at home, and one abroad, to ruin the most innocent person, by entering, without his knowledge, into a correspondence of this nature.

If the being named in treasonable letters be a crime, though it does not appear it was with the privity of such persons, I will submit to your lordships, how far men of the greatest zeal to the present establishment, are to be affected by Mr. Plunkett's insinuations.

No man ought to suffer for the suggestions of another person, unless it appears he has given great foundation for them. And, in this case, would it not be most extraordinary and most unjust, to punish this reverend prelate, for a crime which there is no proof he ever committed? I mean, the dictating of these letters. And if, on the other hand, the unfortunate circumstances of his affairs have furnished him with means of shewing, beyond contradiction that he could not be concerned in the letters of the 20th of April; that for a considerable time he could not see Mr. Kelly; and that there never was an intimacy between them: then, my lords, I hope, every man who gives his vote for the rejecting this Bill, has the strongest evidence of his side to support his opinion; and need not be afraid or ashamed to own it here, or any where else.

This part of the evidence being of great consequence, I must beg your lordships' attention, whilst I recapitulate the heads of it, as clearly and distinctly as possibly I can.

The first witness they called, was Flower, a chairman, who swears, that he carried Kelly twice or thrice to the deanery; but that the Bishop was never at home, and consequently did not see him. His partner swore, he had carried him, with Flower, one of those times.

The next person produced, was a porter, one Vanlear, who deposed, that he went about Christmas was twelvemonths, twice, with messages from Kelly to the Bishop; the last of which times, he carried some beaver stockings; that the Bishop sent for him up stairs, gave his service to Mr. Johnson, and thanked him for his present.

Mrs. Kilburne, at whose house Mr. Kelly lodged says, that, once a servant came from the Bishop, to know how Mr. Johnson did, and was sorry he could not have his company at dinner.

William Wood, the Bishop's coachman, says, he once stopped in Bury-street; but does not know for what; and that the Bishop sent a servant some where, who presently returned. And,

Lloyd, who keeps the Star and Garter in Palace-yard, has told us, that Neynoe once came to his house, and told him, he staid for an ingenious gentleman, who was gone to the bishop of Rochester's house.

This, my lords, is all the proof they offered of this intimacy; from which they would infer, that the Bishop dictated these letters, and is consequently guilty of the crimes laid to his charge.

If your lordships consider what was produced on the other side, I am sure you must agree there is no foundation for this assertion.

Mrs. Kilburne denies, to the best of her knowledge, that the Bishop ever came to her house, or that his coach ever stopped there, or ever was sent for Kelly.

That Kelly did not go out of town, from the time he came from France, till he was taken up, the 19th of May, and never lay out of her house one night.

This, my lords, was confirmed by her maid Anne Ellis.

Mrs. Barnes says, she never heard of any message from the Bishop to Kelly, nor ever had any conversation with him about the Bishop.

William Wood the coachman, who lived with the Bishop four years, has declared, that the bishop of Rochester never sent him with his coach to Bury-street to fetch any person from thence, that there was no stranger at Bromley for a fortnight before his lady died, which was the 26th of April; that nobody could come in a coach or on horseback, but he must know it; that he never saw such a person as Mr. Kelly, till he was shewed him at the Tower; and that the Bishop went ill of the gout to Bromley the 12th of April, and did not return to London till the 7th of May.

Malone, Mrs. Barnes's servant, says, that she never saw the Bishop, or any of his servants, with Mr. Kelly.

Thomas Grant, who has been the Bishop's servant nine years, has declared, that the Bishop went to Bromley the 12th of April very ill of the gout, and that no stranger could come to him, from the time he went to Bromley, till after his wife's death; that one or other of the servants always sat up with him; and that no person could visit him, but they must know it; for they were either in the same room, or the next room to him: and that no stranger, except Dr. Aldridge and the apothecary, came near him. Grant says, that he was forced to go to town to attend at the Westminster election of scholars on the 21st of April, but left Beauchamp there, who came down for that purpose on the 18th.

Beauchamp and Steen, who were the two servants that attended with Grant, swear the same thing.

Susannah Harvey, Sarah Jones, Thomas Farnden, Elizabeth Higginson, and all the servants agree, that they never heard of any person by the name of Kelly or Johnson's being with the Bishop. And,

Mrs. English, who took the names of the Bishop's visitors for many years, does not remember, that she ever heard of such a person as Kelly, or Johnson, And I doubt not, but that every lord must allow, that it is not possible to have a more clear, a more strong, or legal proof to a negative than this is.

I must observe to your lordships, that most of these servants have been in strict custody, and severely used, particularly Farnden, and yet your lordships see how unanimous they are in their evidence: and their testimony is so positive, that I cannot conceive any person can suggest there was the least intimacy between this reverend prelate and Mr. Kelly; and much less, that he could be with him to write the letters that are dated the 20th of April.

Mr. Reeves did, indeed, so far agree, as to be of opinion, that they might have been wrote the 11th of April, which was the day Kelly came from France: but, my lords, Mrs. Barnes has deposed, he went to bed the minute he came home, and lay there for a considerable time; besides it is improbable that letters wrote the 11th, should not be sent till the 19th. But if any further argument was necessary to confute this absurd supposition, the earl of Sunderland's death is mentioned in the letter to Chivers, and that noble lord died the 19th; at which time it hath been proved Mr. Kelly was not with the Bishop.

The bishop of St. Asaph did at first peremptorily contradict one part of Mr. Grant's evidence, by saying, he had received a letter from the bishop of Rochester, at the time which Grant has sworn he was so ill of the gout that he could not write.

His lordship positively affirmed, that he received this letter on Saturday the 21st of April in the morning, and saw Grant in London between twelve and two: but when it was proved that Grant did not leave Bromley till the evening of that day, and that another person officiated for him as butler in the deanery, by reason of his absence, then the Bishop seemed to think himself under a mistake, and allowed it might have been some time before.

His lordship owned, he never received a letter from the bishop of Rochester before nor since, and therefore was a stranger to his hand.

I could have wished this reverend prelate had recollected himself more fully, before he had given his testimony in a matter of this great importance to one of his brethren.

There was another witness examined, which was Crofton the shoe maker, to prove, that Talbot (who was said to have received the three letters directed to Gordon le Fils) was at that time in London, when he was supposed to have been in Boulogne. Crofton swears he saw him in town the 29th of April, and proved it by his book.

There was another person called, whose name was Donner, that deposed, Gordon owned to him the receiving of this packet; but an affidavit was produced from Gordon, in which he denies it. Donner's evidence is only hearsay, the other is positive.

My lords, the counsel for the Bill produced some papers which were taken in the Bishop's custody when he was apprehended, and endeavour to draw very ill-natured and forced constructions from them.

The first was a letter from the duchess of Ormond, in which she acquaints him, "That she had something to send him, which she could not trust to a better hand;" or words to that effect. And this they would pretend to insinuate, were some treasonable papers.

I appeal to all mankind, whether it is not very extraordinary to suppose, that the Bishop should be presumed to convey a traitorous correspondence through that channel. Every body knows the friendship which was between the reverend prelate and that family; and it is not surprizing that this unfortunate lady should think him a proper person to consult, and entrust with her own affairs. Therefore I cannot think, that these general expressions can at all affect him.

The next they read, is a paper found, or pretended to be found at the deanery, subscribed to Dubois, but without date: in this the person who writes it, says, He received a letter by Mr. Johnson, to which he returned an answer in his hand.

The secret committee, at first, apprehended that this was received by the Bishop; and thus it passed, till upon seizing a letter wrote in the Tower by his lordship, they found a similitude in the seals, which immediately enlightened them, and then it was presently said to have been wrote by the Bishop.

They then wanted to fix this to be the Bishop's own hand-writing, and they could find no other way of doing it, but pretending there was a similitude between the E's in this letter, and those which the Bishop generally used. I believe it is the first time that ever such an argument was brought to prove that the whole letter has been wrote by a person: much less was it ever pretended to be offered to a court of justice against any prisoner whatsoever: but I believe, there is no man acquainted with the Bishop's hand, but sees it is not wrote by him.

They would also affirm, that when in this letter the Bishop is supposed to say, that he returned an answer in Mr. Johnson's hand, it must be understood to be his hand-writing: which, I must confess, does not at all appear to be a necessary conclusion; for he might deliver his answer into Mr. Johnson's hand, which, I think, is more natural to suppose than the other.

Your lordships must judge, how improbable it is, that the Bishop should keep such a letter by him, which he wrote himself; or that when such care is taken, as the prosecutors of the

plot themselves say, for preventing any person's discovering the intimacy between Mr. Kelly and him, such a secret should be trusted in writing, and even without a cypher.—The two seals which gave this turn, are Cicero's heads, which are very common, and are to be found every where. They are one broke, the other whole, which must make it very difficult to judge of them: and it is allowed, that, at best, it is but precarious evidence.

If Mr. Neynoe speaks truth, when he said, the Bishop had notice of the storm that threatened him, I am certain, that this paper, if it could have been apprehended of consequence, would have been destroyed: but, I believe, it was impossible for him, or any body else, to think it should meet with such an explanation.

The next letter they produced, which they seemed to think material, was that which was seized on his servant going to Mr. Morrice: in this he says, that the evidence of Plunkett, and those people, could not affect him; but as he does not mention Mr. Kelly, they would have it presumed, that this is a proof, that Kelly could have said something of him. But, I think, this must appear to be a very ill-natured assertion.

Your lordships will consider, he was then writing to his son-in-law; and therefore no great accuracy was necessary.

In another place, he says, that if they impeached him, he should remain in prison for some time; and this they would decypher to be an implication of his guilt.—But, in my poor opinion, it is the reverse: he seems to say, that if the Commons should be induced to send up an impeachment against him, he was so satisfied of his own innocence, and your lordships' justice, that he thought the confinement till his trial would be the only misfortune that could attend him. The example of the earl of Oxford was recent in his memory, and might justly create in him a fear of undergoing a long imprisonment.

It is objected, that he, in this letter, makes no protestations of his innocence: but if you will consider he writes to Mr. Morrice, I believe every body will agree, that such declarations were not necessary.

Mr. Layer's attainder was read; but it does not appear, that the Bishop had any correspondence with him; therefore I cannot conceive why we were troubled with it.

My lords, I have now gone through the whole evidence that is brought to justify this extraordinary proceeding, and must observe the steps that have been taken to procure all the possible means to work the destruction of this great man.

You have seen his very servants confined, who, it does not appear, were guilty of the least glimpse of treason.

Lawson, a baker of Bromley, who appeared at your bar, has been employed to examine the persons in the Bishop's neighbourhood, in order to find the least particular that could amount to the shadow of a proof; and went so far, as to offer Wood the coachman the wages that were due to him, if he would have gone the lengths that were required.

Mr. Bingley told us in the Case of Kelly (and as it has not been disproved, it is to be taken for granted), that a warrant was shewn by the messenger, signed by a secretary of state, to carry him to Newgate, which he was told was unavoidable, unless he would own the letter of the 20th of August to be Mr. Kelly's hand-writing: but it appeared the next day, to be nothing but in order to terrify him.

Mr. Kelly himself has told your lordships, that Mr. Delafaye offered him his own terms if he would have turned evidence: and this was done to destroy the bishop of Rochester; or, to speak in the language mentioned at your bar, "to pull down the pride of this haughty prelate."

Your lordships may remember, that Mr. Wearg objects to the Bishop's servants, because two of them had employments, as appears by his lordship's own letter: but, my lords, when they were examined, they acquainted the House, that it was upon the reading of the Report, that they recollected the Bishop's circumstances before the death of his wife. And if every man who has a place under the Bishop, is not to be esteemed a free agent, when he is upon oath, I hope it will be allowed, on the other hand, that those who have employments under the government, ought not to be admitted; then all the witnesses that have been brought to support the Bill, from the decypherer to the messenger, will be discredited, and the whole prosecution must fall to the ground.

My lords, it has been a hardship that has attended the Bishop, that he has been forced to prove a negative; and the difficulty has been the stronger upon him, that your lordships have not permitted Mr. Kelly to be examined, as was moved by a learned lord, in my eye; and if the gentleman had sworn what he so solemnly affirmed at your bar, relating to this affair, I can't conceive we could have had the least debate.

The noble lords who appeared the most zealous in this prosecution, were those who opposed the examination of Mr. Kelly; which, in my poor opinion, is a strong argument, that, if he had been brought before us, he would have persisted in his declarations of the Bishop's innocence.

The reverend prelate has desired of any lord in the administration, and even the honourable person who appeared at your bar, to declare, whether any one single person had charged him (on their own knowledge) of being guilty of any treasonable practice. And it has appeared to the contrary: therefore this whole charge is founded upon the slight circumstances and improbable innuendoes before-mentioned.

Another objection, which has been raised, is, that Mr. Kelly made resistance, when he was seized, till he had burnt some of his papers:

but, my lords, I don't see any reason to lay this to the charge of the Bishop.

Kelly is to answer for his own actions, and is unfortunately like to suffer for them: a person of his age might have many letters in his custody, which he did not care should be seen, and yet of a different nature from a traitorous correspondence.

After this evidence is considered, I cannot think your lordships will establish such a precedent, which hereafter may be employed to ruin the greatest amongst you. And if ever hereafter, pains and penalties are unjustly inflicted on any person, posterity will derive the original of such Bills from the proceedings of this parliament; and what opinion will be framed of us, should this be passed into a law, I submit to every impartial person.

It must be left to your lordships' consideration, which will be of most fatal consequence to the public, the leaving this precedent (of condemning on such kind of evidence) like a sword which your enemies may take up when they please; or the banishing the bishop of Rochester, in the evening of his days, who alone could do, in his single person, no prejudice to the constitution.* If he were inclined to overturn it, as his enemies suggest, he is in a better situation abroad than at home, to execute that design, and direct the counsels of the disaffected.† The ruin of one man will not heal the wound, that the passing of this Bill seems to make in the government of this kingdom.

It has been said in the debate, that the Bishop ought to have made protestations of his zeal for his majesty and his family: but, I think, he took the most ready way of performing his duty, when he shewed himself innocent of the crimes laid to his charge.

If he had made use of any expressions, which those lords blame him for omitting, the same good-nature would have called it hypocrisy; and those who are displeased with his silence, would have accused him of insincerity.

My lords, this Bill seems as irregular in the punishments it inflicts, as it is in its foundation, and carries with it an unnatural degree of hardship.

It is felony for his children to correspond with him: and in this circumstance, it is different from the only Bill that carries with it the least resemblance of this; I mean, that for the banishment of the earl of Clarendon.

The earl had flown from the prosecution, and retired beyond sea. The charges against him were, principally, for advising a standing army; and another article exhibited was, "That he had advised and procured divers of his majesty's subjects to be imprisoned against law, in remote islands, garrisons, and other places, thereby to prevent them of the benefit of the law, and to produce precedents for the imprisoning any other of his majesty's subjects in like manner."

The 7th article against him was, "That he had, in a short time, gained to himself a greater estate than can be imagined to be gained lawfully in so short a time: and, contrary to his oath, he had procured several grants under the great seal from his majesty, for himself, and his relations, of several of his majesty's lands, hereditaments and leases, to the disprofit of his majesty."

There need not have been any witnesses of these crimes, for they were apparent; and every body knew that he was prime minister: yet sir Francis Goodier, upon that debate in the House of Commons, declared the sentiments which I expressed at the beginning, "That he was not against proceeding, but unsatisfied to do it without witness, it being like swearing in 'verba magistri.'"

Another great man, upon the same question, and an ancestor to a noble lord near me, said, "That if the parliament set aside law in this case, we should be happy to see law declaring the power of parliaments."

The punishment for corresponding with the earl was high-treason, and then two positive witnesses were necessary to convict: but, in this case, one corrupt, terrified, and perjured person may take away the life of the most innocent man.

There is another great misfortune which this Bill brings upon the Bishop, which is, that he is incapable of receiving his majesty's pardon. This, my lords, is an entrenchment upon the prerogative. And what must make it the more severe in this case, is, that his majesty's inclinations to mercy (which are the distinguishing characters of his life) are stopped by this law, which the unfortunate prelate might have hopes of receiving when he had merited it, by a dutiful behaviour to the country that had sent him to wander abroad in exile, and by his future conduct have confirmed, if possible, the evidence he has given of his innocence.

My lords, in the case of the earl of Danby, your lordships have declared, that his banishment should be no precedent, nor drawn into example for the time to come, and have so entered it in your Journals.

It has been proved, that this reverend prelate was at the time that he was suspected to be acting in treason, engaged in studies of the most high nature, which is a circumstance that ought to have some weight.

If this Bill pass into a law, such evidence is established, and such a method of proceeding introduced, as must effectually render all that is dear to us precarious; and if ever, hereafter, we should see a wicked administration, supported by a corrupt majority in parliament, this

* This passage, as exhibited here, is but awkwardly constructed. Of statesmen, who after impeaching others have been themselves impeached, see vol. 8, p. 127; vol. 11, pp. 632, 633; vol. 14, p. 1394.

"Μυρὶς ἐνυάλιος καὶ ὠὴν ἀλαθέα κάθλα."

† See Mr. Oglethorpe's Speech in the House of Commons, New Parl. Hist. vol. 8, p. 216.

step taken in these times of liberty, will be a sufficient precedent to give a colour of justice to the actions of those who should be wanton in tyranny.

The reverend prelate, who spoke before me, mentions some cases relating to bills of attainder, which, in my poor opinion, differ very much from our present question.

The attainder of sir John Fenwick was only to supply the want of a witness who had deposed against him upon oath before the grand-jury, and who was spirited away by the prisoner's friends: but at present, your lordships are to supply the defect of evidence, by condemning on improbable conjecture. There was a noble lord in this House the other day, I don't see him now, who made the greatest figure in opposition to that Bill, I wish we could have his assistance on this occasion.

My lords, since that reverend prelate has quoted some cases, he will permit me to remind him what has been formerly said upon acts of attainder; that such bills, like Sisyphus's stone, have frequently rolled back upon those that were the chief promoters of them.*

This prudential argument should restrain us from being too forward with them at this time of day.

The act for the attainder of the earl of March passed, because he had been instrumental in procuring the attainder of another lord, under pretence of a letter, which the record says was no evidence.

The lord Cromwell† is another known instance of this observation: he was the first who advised this violent proceeding in Henry the 8th's time: and it is remarkable, that the advice he gave to the ruin of others, proved, not long after, fatal to himself.

I have now given your lordships the reasons why I am against the Bill. I fear I have tired your patience, and shall therefore conclude with the words of the great man I before mentioned; I mean, sir Heneage Finch, in the case of the earl of Clarendon—"We have an accusation upon hearsay, and if it is not made good, the blackest scandal hell can invent lies at our doors."

The result of this debate was, that the Bill passed the House; it afterwards obtained the royal assent, and was as inserted at page 644.

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"It is a remarkable anecdote relating to this Speech, that his grace, then in opposition to the Court, went to Chelsea" [Walpole lived at Chelsea] "the day before the last debate on that prelate's affair, where acting contrition, he professed being determined to work out his pardon at court, by speaking against the Bishop, in order to which he begged some hints. The minister was deceived, and went through the whole cause with him, pointing out where the strength of the argument lay, and where it's weakness. The duke was very thankful, returned to town, passed the night in drinking, and without going to bed, went to the House of Lords, where he spoke for the Bishop, recapitulating in the most masterly manner, and answering all that had been urged against him." Horace Walpole, (lord Orford,) Catalogue of Royal and Noble Authors, art. Wharton.

It may be observed that in the debate which arose out of Atterbury's Petition for directions whether to defend himself in the House of Commons, (see p. 434,) the duke of Wharton opposed a motion declaratory that the Bishop ought not to defend himself there, and said that the Bishop having already applied to the House of Commons to assign him counsel, it was preposterous for him to pray the Lords not to give him leave to be heard before the Commons, which was the drift of his Petition. See New Parl. Hist. vol. 8, p. 210. This circumstance might render it more easily credible, that Wharton was indisposed towards Atterbury.

Mr. Wynne, after dispatching the vindication of his father (see p. 516,) proceeds to defend the duke of Wharton from lord Orford's imputation. I will transcribe his own expressions:

"I was going to close these observations; but as the author has thought fit to introduce the foregoing passage in his anecdote of an unfortunate duke, I am apt to think, he is in that respect also mistaken, or misinformed. I would not be understood to defend his levities, or want of principles, (as the author calls them,) but happening to know the company his lordship had with him almost every hour of that day before he spoke in the House of Lords, and to whom he was pleased to shew his Speech ready drawn up, all in his own hand-writing, whom he pressed to peruse it, and during that conversation, his grace altered and supplied it, as he thought proper, upon the spot, and I believe, is the same in substance as that which soon after appeared in print, and, notwithstanding the author's insinuation, I believe I can truly add, that he hardly ever passed a day or evening more soberly than that, and happy it would have been, had he passed more in the same manner.

"So that this was not a sudden start, upon conference that day or night, with the minister, under a feigned contrition to draw hints from him, which he did not want. For it is well known, his grace had, from the beginning to the end of that long proceeding, constantly attended, and took notes, amounting at least to a quire of paper, and not only spoke on behalf of the Bishop in the run of the cause, but had

* See pp. 632, 633, of vol. 11, and vol. 8, p. 127, as there referred to. See also Gregg's Case, vol. 14, p. 1371, A. D. 1707-8.

† See his Case in this Collection, vol. 1, p. 433.

signed several protests concerning those proceedings many days before. If the minister, after this, was deceived, he was easily deceived, and contrary to his known and usual sagacity, and in a matter very notorious to most others.

"This don't rest merely upon my assertion, (though I was present every day, and therefore no incompetent witness,) but might appeal to others still alive, and to the Journals themselves, as well as to the printed protests (in folio and in octavo,) where his grace's name is to be found among other noble lords, on the 2d of May, 1723, and on the 3d, 7th and 11th of May. And at last, on the general question, whether the Bill should pass, (15th of May) after he had spoke at large upon the debate, he not only protested again for some of the reasons given by the other lords, but added four more of his own. So that there seems to be no room to doubt but that his lordship was all along as much prepared, fixed, and determined upon this matter, as any one could be. Whether he was right or wrong in his judgment, I don't presume to say.

"It is not improbable but he might go to the minister at some other time, as he did once or twice dine uninvited at the Board of Green cloth, that was kept in the neighbourhood during that proceeding, by way of frolic or fun, or as the author calls it, in a fit of levity; but not by way of information or instruction, or to beg hints, and because he was sufficiently master of the whole proceeding from his own notes and observations."

According to bishop Newton (see the account of his life, written by himself) Wharton's father had predicted of him that he would always take wrong courses, would learn his politics of Atterbury, and be ruined.

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465. The Trial of Edward Arnold, for Felony (in maliciously and wilfully shooting at, and wounding, the Right Hon. the Lord Onslow), at the Assizes held at Kingston upon Thames, in Surrey, March 20, before the Hon. Robert Tracy, esq. one of his Majesty's Justices of the Court of Common-Pleas: 10 George I. A. D. 1724.

Rex *ver.* Arnold.

Edward Arnold brought to the bar.

Surry *ss.* Jur' pro Domino Rege sup' Sacrum suum presentant quod Edwardus Arnold nup' de Paroch' Sci Nicholai Guildford aliis Guldeford in Com' Surr' predict' post primum diem Junii Anno Dom' Millimo septingentesimo vicesimo tertio scilt vicesimo octavo die Augusti anno Regni Domini nri Georgii Dei Gratia Magne Britannie Franc' et Hibernie Regis fidei Defensoris, &c. decimo vi et armis, &c. apud Paroch' Sci Nicholai Guildford aliis Guldeford predict' in Com' Surr' pred' in et sup' prehonorabil' Thomam Dominum Onslow Baron' Onslow de Onslow in Com' Salop et de Clandon in Com' Surrey in pace Dei et dicti Domini Regis adtunc et ibidem existen' illice felonice voluntarie malitiose et ex malicia sua precogitat' insult' fecit et adtunc et ibidem Idem Edrus Arnold quoddam Tormentum Angce 'gun' valent quinq' sol'id' cum pulvere Bombardino Angce 'gunpowder' et plumbeis Globulis Angce 'leaden shot,' adtunc et ibm' onerat' quod quidm' Tormentum ipse idm' Edrus in manibus suis adtunc et ibm' habuit et tenuit in contra ad et versus prefat' prehonorabil' Thomam Dominum Onslow (eodem prehonorabil' Thoma Domino Onslow in alta Regia via apud Paroch' Sci Nicholai Guildford aliis Guldeford predict' in Com' Surr' predict' adtunc existen') adtunc et ibm' illice felonice voluntarie malitiose et ex malitia sua precogitat' disposit et exoneravit Angce 'did shoot,' pinde adtunc et ibm' dans eidm' Thome Domino Onslow in et sup' sinistrum humerum ipsius Thome Domini Onslow unum grave vulnus latitudinis Sex Pollicum et profunditat' Duorum Pollicum contra pacem dicti Domini Regis nunc Coron' et Dignitat' suas, &c. nec non contra formam Statut' in humoi casu edit' et provis'.

Clerk of Arraigns. How sayest thou, Edward Arnold, art thou Guilty of the felony whereof thou standest indicted, or Not Guilty?

Prisoner. Not Guilty.

Cl. of Arr. Culprit, How wilt thou be tried?

Prisoner. By God and my country.

Cl. of Arr. God send thee a good deliverance.

Cl. of Arr. You Edward Arnold, the prisoner at the bar, hearken to what is said to you. Those good men that are now called, and do here appear, are those that are to pass between our sovereign lord the king and you, upon your life and death; if therefore you will challenge them, or any of them, you must challenge them as they come to the book to be sworn, before they are sworn.

Then the Jury were sworn.

Cl. of Arr. Count these.

Cryer. Are you all sworn, gentlemen?

Jury. Yes.

Cl. of Arr. Make a proclamation.

Cryer. O Yes; if any of you can inform

my lord the king's justice, the king's attorney, or solicitor general, of any treason, murder, felony, or other misdemeanor, committed by the prisoner at the bar, come forth, and you shall be heard; for the prisoner at the bar now stands upon his deliverance: and all persons bound by recognizance to prosecute the prisoner, come forth and prosecute, or you will forfeit your recognizances.

Cl. of Arr. Edward Arnold, hold up thy hand. Gentlemen of the Jury, look upon the prisoner, and hearken to his cause; he stands indicted, &c. 'ut supra;' upon which indictment he hath been arraigned, and pleaded Not Guilty; your charge is to enquire whether he be Guilty of the felony whereof he stands indicted, or Not Guilty.

Mr. *Hungerford.* I only beg leave to trouble your lordship with one word in this business. Your lordship hath been applied to by petition, and an affidavit thereto annexed, in respect to the man's circumstances, that he may have a solicitor by him to call his witnesses only. I pray they may be read.

Just. *Tracy.* Read the petition and affidavit.

Cryer. "To the honourable Robert Tracy, esq. &c. The humble Petition, &c."

Mr. *Hungerford.* My lord, all that we desire is, that he may be by him, to tell and to assist him in calling for his witnesses.

Serj. *Cheshire.* My lord, I am commanded to attend this service, as I have the honour to be of the king's counsel; and I apprehend nothing is expected from me of a consent to a thing of this kind. Your lordship is of counsel for all the prisoners, who by law can have none, as this man can't have any. This is a design to forestall the justice this man is coming under, and to anticipate it. My lord, if any thing appears in the nature of this man's defence and his behaviour, your lordship will take care that the officer calls for what evidence is proper. Nothing hath appeared in this man's conduct, as I am informed: he hath been called to his trial; he hath pleaded in the common method as other people do; and the man, to my sight, seems as sensible as myself, or any person in court: therefore, when nothing else will do, they must have recourse to the method of this affidavit. What is this affidavit? An affidavit of two brothers, that he now is, and hath been, &c. which is more to blacken the prosecution than any thing else. If they thought him so, why hath he not been restrained, and a commission of lunacy taken out? There is no pretence of that. As this person is charged with so horrid a fact, I cannot consent to this. I am sure your lordship will make no new precedent. And pardon me, my lord, if I say your lordship is of counsel for the prisoner; and till it doth appear that he is lunatic, your lordship will make no new precedent.

Serj. *Whitaker.* My lord, I am likewise of counsel for the king; and I must needs say, in the little experience I have had, I never saw any thing of this nature offered. I have been attending often on indictments at the Old Bailey, and elsewhere, and sometimes when mad people came on to trial, and have been really in that condition that the persons would fancy the prisoner to be; but such an attempt as this I never knew before. Your lordship and the Court will, when a man pleads Not Guilty, do right, and enquire after this matter: if there is any pretence for insanity, it is his defence; but that the counsel for the king should give it up, and yield that he is so, cannot be expected; for by agreeing to this petition we do.

It is very extraordinary to hear counsel speaking till they are assigned; but as they have taken that liberty, I don't blame them: every one is to do the best for his client: but I hope, for precedent sake, and for justice sake, there shall not the least countenance be given to this matter; I take it we cannot consent to it. By law the prisoner cannot have counsel; therefore I hope this petition shall be rejected.

Serj. *Comyns.* I shall not trouble your lordship; it is a matter so new and surprising, that I need not add to what hath been already said, but shall submit it to your lordship.

Mr. *Marsh.* My lord, I beg your lordship will indulge me one word in this matter. The attempt they make is to have a lunatic assisted in his trial. With submission, I don't know any assistance he is capable of: for if really a lunatic, he is insensible, so as to receive no assistance, supposing he committed the fact.

As to calling his witnesses to prove this insanity, these very brothers, if they stand in any part of the Court, may equally call them, as well as if they had any assistance of an attorney or solicitor to stand by him. I would not fling any imputation on any person; but if the man hath a design to act a mad part, as the design will appear, if he be really sensible, then he is capable of receiving the instructions of the agent, if he happens to be out, how to behave himself mad; so that no good, but a very bad use may be made of it. As to the consent, we can't do it. We think as to the subject-matter of the petition, your lordship can't grant it, from the inconveniencies that may attend it.

Mr. *Hungerford.* I——

Serj *Whitaker.* My lord, we oppose his speaking.

Mr. *Hungerford.* I was going——

Just. *Tracy.* It must not be.

Mr. *Hungerford.* My lord, I know my duty so well, that I submit: but I see your lordship hath more temper and lenity. I believe it is indifferent what part of the court his brothers are in, if his solicitor stand by him. I know no other use to be made of it than to call his witnesses.

Just. *Tracy.* I can't do it with any consent. What my brother says, the law is clear in. It is my duty to give him all the assistance I can; and that I will do.

Mr. *Hungerford.* Let the names be handed to somebody to call the witnesses.

Serj. *Cheshire.* We that are counsel for the king will do nothing that is hard.

Serj. *Whitaker.* No, I never will, while a man's life is at stake. None of us will do any thing that is hard.

Just. *Tracy.* I don't believe you will.

Mr. *Ballard.* May it please your lordship, and you gentlemen of the jury, this is an indictment at the suit of the king, against Edward Arnold; and the indictment sets forth, that Edward Arnold, late of the parish of, &c.

To this indictment he hath pleaded Not Guilty; if we call our witnesses, and prove the indictment, you will find him Guilty.

Serj. *Cheshire.* May it please your lordship, and you gentlemen of the jury, I am in this case, counsel for the king. The prisoner at the bar, Edward Arnold, stands indicted upon an act of parliament of the last session of parliament; and, gentlemen, it is for maliciously and wilfully shooting the lord Onslow, and wounding him, as he apprehended, and as will appear from the evidence, mortally. It pleased God to preserve him; but notwithstanding that, the fact by him committed is felony, without benefit of clergy.*

And, gentlemen, though we need nothing to justify a law, made necessary from instances in your own neighbourhood, yet, give me leave to tell you, it is but reviving the old law of England; for by that, if a person did an act to another, whereby death might ensue, notwithstanding the party did not die in a year and a day, it was felony. We have instances of this so early as Edward the second, and Edward the third; but I own, of later years this hath been discontinued, and held an offence punishable at discretion, yet not punished with death, till this act I have mentioned, which is but only the old law of England revived. And if the barbarity of people made it necessary, it became the legislature to make it felony, without benefit of clergy.

Gentlemen, the fact this person hath been guilty of, was committed in this manner. On the 28th day of August last, within less than three months after passing the act, as if the fellow had studied, and been fond of being the first instance of cruelty that should suffer by this act, this noble lord, mentioned in the indictment, and upon whose life this person had a deliberate design, had been out with gentlemen a hunting a fox-chase: upon his returning down a lane in the king's highway, as will appear by the evidence, one Mr. Flutter was on my lord's left hand, and Mr. Fawks almost on his right, my lord in the middle; Mr. Flutter then observing the prisoner at the bar coming up with his gun cock'd, and the muzzle towards him, asked him, what was the meaning of his coming in that manner, with his muzzle of his gun, and his gun cock'd? The man makes no answer, goes on a pace or two, turns back, and takes aim, and shoots at this noble lord. The blast being so near, it struck him off his horse, wounded him in a cruel manner: it proved (it pleased God) not mortal, and that because he could not buy such shot as he designed. My lord, it must naturally strike horror to those about him, who had no apprehensions of this kind, to find the noble person thus shot. You will easily believe, they alighted to his assistance, they got him to the bank; he cry'd, The villain hath kill'd me; as well he might: some of the company observing the fellow, he went on his way thirty or forty paces: they overtook him, and he resisted at first, but being brought to the noble lord, whom he had thus wounded, he makes no excuse; he seemed to struggle, according to the account I have in my brief; he seemed to be pale and livid, and to have great rancour, and aimed, with the musket, to do that that the shot had not done; but that, you may easily imagine, was prevented.

Gentlemen, one would wonder how a thing of this kind could enter into his head; but upon enquiry, this cruel, barbarous man hath meditated on this in his thought for some time; and now, after facts are done, people are apt to make discoveries, and they knew further than they knew before. One would be apt to enquire, what could be the occasion of this? One would think this noble lord had abused and injured this man to the last degree; so far from that, that this noble lord was unknown to the man; the man did not know him, but was forced to seek opportunities to know this noble lord, that he might seek this revenge. It is not properly revenge, because revenge is a return to an injury, but here was no injury done this man by my lord; my lord did not know him, nor, for aught I know, the man did not know my lord. But how then came this about? According to the tenor of his confession, it arose from the most wicked things. This noble lord is known to you all, he hath always appeared in the service of his country, an assertor of the liberties thereof, always endeavoured to support the present government, in the House of Hanover, and is for the Protestant religion, against rebels, and for suppressing clubs, and places of meeting for people's wicked enterprizes; and if that be a fault, I hope it is a fault most of you are guilty of, and will be guilty of; that you are for asserting the liberties of your country and your religion, and for supporting the crown; and if this man is to be believed, the people had inspired him, brought him to a pitch of enthusiasm, I don't know what to call it, that my lord was an enemy to his country, and he thought he should do God and his country good service, by destroying him: hence it is necessary to shew what evidence we have to open to you, and tell you what preparation (it comes out) that this fellow made; and it is very proper, because that perfectly throws aside any of the pretences whereby to throw a dust in your eyes, to extenuate the crime, that he

* See Leach's Hawkins's Pleas of the Crown, b. 1, c. 55, s. 1. East's Pleas of the Crown, c. 8, s. 6.

had acted like a madman; he had a steady and resolute design, and used all proper means to effect it.

Gentlemen, though he acted like a wicked man, void of reason, you will have little reason to think he acted like a madman.

Every man that so departs from reason, every wicked man may be said to be a madman; but I hope that shall not skreen all that so act, and free and exempt them from punishment.

My lord, the morning this happened he went to the house of one Smith, and had a quarter of a pound of powder, and a pound of shot; and the person directed them to No. 2, and gave him that shot which was a larger sort than he used to have: and it seems he is a marksman, as you will hear; it was always his business to aim at the head.

He had the powder and the shot; and that morning he was met by one, who hearing him discharge his gun, asked what he had been doing, what he had killed, as you will hear from one of the witnesses: says he, I only did it to discharge my gun. Gentlemen, this is to shew that the purpose was steady in him, and he would meet with no disappointment, but that his purpose might take effect. You know, a gun that hath been charged some time, and laid by, some wet or damp may happen to it to prevent its going off; in order to hinder that, he first discharges his gun, and then loads again, that he might be secure of its going off. And after he had thus prepared himself, the next thing was to be apprized which way my lord was gone, which way the dogs went: he was asked the reason, Are you going a hunting? He falls out into a rage, that my lord Onslow was an enemy to his country; and if he could meet him, he would shoot him. Within a few minutes afterwards this noble lord with his company, as I have mentioned, came by. The man being thus prepared, discharged his gun, and executed his wicked design. My lord, this is the nature of the thing; and this coming to his master's ears, he could not but be concerned that those who appeared eminent and zealous in his service should meet with such treatment: therefore his majesty hath given directions to have his own servants appear in this prosecution to see that right be done: and if we make out this to be the fact, there is no need of rhetorick or flourish of words to deceive you, nor I believe of any thing to work up your passions, or to persuade you to do right between the king and the prisoner; which is all we desire.

Serj. *Whitaker.* May it please your lordship, and you, gentlemen of the jury, I am counsel in this case for the king; and though we have the honour to serve the king, yet we desire nothing but according to the calm rules of justice. If the evidence satisfy you, that this person, this man, is guilty, then we expect you find him so; if it is not sufficient, nothing said by us should influence you to do an injury: therefore whether the man is guilty, and a proof of that is the matter which is to be laid before you, we won't use any manner of persuasion one way or other, but plainly lay the fact before you.

Gentlemen, this man is indicted upon an act of parliament passed the last sessions; and this act of parliament every body thinks a necessary act; and if so, it is a just and good act; and if it be just and good, it is fit it should be put in execution when it is trangressed. Gentlemen, I shall take up little more of your time than only to state one or two facts, which we shall farther lay before you.

When the wound was given to this noble lord, there was some discourse with him about it; and among the rest one gentleman, you will observe, who was in company, and riding by my lord Onslow, asked him, how came it to pass he had not shot him? Sir, says he, you are an innocent man. This we make use of for these two purposes: the one to shew that he had particular malice against my lord Onslow; upon what occasion hath been opened by my brother, and I shall not repeat it: the other, to shew that this was done with great deliberation, and done against this noble lord.

Gentlemen, then further, when it comes to be enquired of him afterwards, when he seemed to be cool, How came you to do this? and, It's pity he should be guilty of such an act; he says, Have no concern for me; I must answer for it. Gentlemen, these things shew that he had no manner of remorse, not the least. One would have thought in case of passion and revenge, when people had vented their malice, they would come to repent, and be concerned; but instead of that it appears, by his discourse afterwards, he had not the least concern or remorse.

Then as to his preparation for this fact, it had all the deliberation in it as could be: he goes to a shop where he used to buy his powder and shot; but they happen not to provide him with so large a shot as he expected; he at that time asked for the largest shot; the master of the house was not within, but the mistress was; says she, Go and fetch No. 2, which proved not to be so large as he would have had. No. 2 is looked out for him, and he buys a quarter of a pound of powder and a pound of this shot.

This evidence we shall give, and add to what hath been opened already; and then we shall leave it to your consciences and your judgments, whether we have not sufficiently proved the charge in the indictment; and if we have, we shall appeal to your judgments, and to your consciences, what verdict to bring in.

Serj. *Comyns.* My lord, we shall beg leave to call our witnesses.

Mr. *Flutter* sworn.

Serj. *Cheshire.* Sir, will you tell my lord and the jury—give an account of what passed when this fact was committed.

Just. *Tracy,* Bid the prisoner come up.

King's Counsel. We desire he may.

(Brought up accordingly nearer to the Court.)

Just. *Tracy.* (To the Prisoner.) As all the witnesses come, if you have any question to ask, put it to me, and I will ask your question for you; I will give you all the assistance that lies in my power.

Flutter. As we were coming back from hunting with my lord Onslow we came into a narrow lane, a sandy lane near Guildford; my lord Onslow was on my right hand, I was even with him; I saw a man coming up towards us; this man, the prisoner; and I saw he had his gun cocked; he met us.

Serj. *Cheshire.* Did you say any thing to him?

Flutter. When he came to my horse's head, his countenance changed pale; then I asked him, why he carried his gun in that manner? He made no answer but immediately turned short, and shot my lord.

Serj. *Cheshire.* In what place was it? What is the name of the place?

Flutter. I don't know the name of the lane; it is near Katherine-hill.

Serj. *Cheshire.* In what parish is it?

Flutter. St. Nicholas's parish.

Serj. *Cheshire.* What was the effect of his shooting?

Flutter. My lord Onslow fell off his horse on his face; my horse startled at the gun going off; but as soon as I could turn him, and come up, I saw the blood come; and I said, My lord, I will go to Guildford, and get some surgeons; and accordingly I went.

Mr. *Marsh.* What became of the prisoner?

Flutter. He walked up the sandy way; but I can't tell what became of him, because I was gone for the surgeon.

Serj. *Cheshire.* Arnold, would you ask this witness any questions?

Just. *Tracy.* Put it to me; tell me what question you would have asked, I will ask it.

Prisoner. I don't know. Ask him yourself, if you have a mind to it. I don't know. I used to go that way every day. I am sorry for what is done; and I cannot think how I came to take that way.

Serj. *Cheshire.* The devil worked with him, stood at his right hand, and directed him.

Mr. *Parsons* sworn.

Serj. *Whitaker.* Mr. Parsons, pray give an account of what happened on this 28th of August, as you was returning from hunting with my lord Onslow.

Parsons. We met the prisoner at the bar, Edward Arnold.

Serj. *Whitaker.* Was you near my lord?

Serj. *Cheshire.* How did you ride?

Parsons. I was behind Mr. Flutter.

Serj. *Cheshire.* You were pretty near together?

Parsons. Yes, very near.

Serj. *Cheshire.* What did you observe?

Parsons. We met this man coming up the lane. I saw him present his piece; he took aim, and shot my lord. My lord fell off from his horse.

Serj. *Cheshire.* What did you do?

Parsons. I went to see whether my lord was dead: I saw he was not dead; and the prisoner made off.

Serj. *Cheshire.* In what manner did the prisoner make off? Did he walk or run?

Parsons. He did not run. I rid after him, and rode him against the bank:—You villain, said I, you have killed my lord: you will be hanged for it. You won't hang me to day, will you? says he. No, not to day; but you will be hanged.

Serj. *Cheshire.* How was his countenance?

Parsons. Very pale and confused.

Serj. *Cheshire.* Did he surrender himself to you, or make any resistance?

Parsons. He told me, he would charge again: No, says I, you shan't: Then I called out to another man to take him, one Green: When he came, I said, this villain hath shot my lord Onslow.

Just. *Tracy.* Did the prisoner Arnold say he would charge again?

Parsons. He said he would charge again; but he could not, for he had no time.

Serj. *Cheshire.* How far was the prisoner got from the place where he shot my lord?

Parsons. About thirty yards.

Serj. *Cheshire.* What did you do?

Parsons. I brought him back to my lord.

Serj. *Cheshire.* What happened then when you brought him to my lord?

Parsons. When I brought him in sight of my lord, says my lord, You villain, you have killed me.

Serj. *Cheshire.* What did he say?

Parsons. He said nothing.

Serj. *Cheshire.* Did he seem to struggle?

Parsons. He did seem to struggle, to strive to come at my lord, as I thought.

Just. *Tracy.* What did you think?

Parsons. When he was brought by my lord, he struggled, and seemed to strive to come at him. Says I, Mr. Green, take him away, for he is coming at my lord again: I thought so.

Just. *Tracy.* Had he his gun?

Parsons. His gun was taken away from him.

Mr. *Marsh.* You say you rid behind Mr. Flutter and my lord; what distance was there between you and them?

Parsons. My lord and Mr. Flutter rode abreast; I was behind, I believe, about two or three yards.

Mr. *Marsh.* If I understand you right, you say you saw the prisoner aim at my lord; did you see him aim at my lord Onslow?

Parsons. I see him aim at my lord Onslow.

Serj. *Comyns.* In what manner did he seem to level? Towards his head, or how?

Parsons. I thought it was towards his head.

Serj. *Comyns.* Where did he shoot him?

Parsons. In the left shoulder.

Serj. *Cheshire.* Prisoner, will you ask this witness any question?

Prisoner. I don't know what to say to him.

Mr. *John Fawks* sworn.

Serj. *Cheshire.* Sir, will you tell my lord and the jury, while you was in company, and attending my lord Onslow from hunting, what happened when this tragical fact was committed.

Fawks. My lord, returning from hunting with my lord Onslow, coming down this lane where this accident happened, I espied Mr. Arnold at some distance before any of the rest did: I said to Mr. Parsons, here is Mr. Arnold coming up the lane? I will be hanged if he hath not a mind to shoot me. Mr. Arnold passed by my lord with a stern look upon him; I was in the road; this Mr. Flutter was on the right side of my lord, and I was in the same road with my lord, behind him about four or five yards. He passed my lord Onslow, and comes up almost over-against me, rather beyond me; I see him look sternly on my lord Onslow and on me; he had his piece so as they commonly carry them when they shoot flying: He comes up with his piece and shoots my lord Onslow in his shoulder: My lord dropped by degrees upon the ground. I got off my horse, and turned my lord's face from the ground, for fear it should be scratched with the dust, which was like pounce or fine sand: So I turned him as soon as I could, and drew him to the bank: I laid down, and my lord laid down upon me upon my shoulder. I said, take care of the villain, seize the villain: he hath killed my lord: I cried out to seize him, as well to secure him, as for fear the villain should turn and shoot again.

Just. *Tracy.* You say you saw him coming down the lane?—*Fawks.* Yes, my lord.

Just. *Tracy.* You say you followed my lord Onslow in the same track?

Fawks. Yes, my lord, I did.

Just. *Tracy.* How far was you from my lord?

Fawks. I believe I might be in the same track, about four or five yards from him.

Just. *Tracy.* Then you was after my lord?

Fawks. Yes.

Just. *Tracy.* My lord must be between you and the prisoner; how came you to take notice of him?

Fawks. My lord, this prisoner rid away with my horse a week or a fortnight before. I called at my taylor's and put my horse at the door; in the mean time I went in; and when I came to take my horse again, my horse was gone: So I run out in a surprize, and seeing nobody, a man that was by told me, Ned Arnold hath rid away with your horse. I coming out into the street, could see into the middle of the town: where I saw my horse three or four stones throw off, and he walking him up the town; I made haste—

Just. *Tracy.* I ask you, you say you saw him at a distance, and you was behind my lord?

Fawks. Yes, I was so.

Just. *Tracy.* Then consequently my lord was between you and the prisoner.

Fawks. Yes, the way we came.

Just. *Tracy.* You say my lord was between you and the prisoner; how could you distinguish the prisoner from my lord?

Fawks. Because he was in the foot-way, and we were in the horse-way.

Just. *Tracy.* He was in a different track?

Fawks. Yes, my lord; he comes up the foot-way, and the way we were in was the horse-way.

Serj. *Cheshire.* As you was riding, could you perfectly distinguish the man?

Fawks. Yes, I could.

Serj. *Comyns.* Pray, one word. Thus you say, when he had passed by lord Onslow he turned back; what did he do at that time?

Fawks. He gives a look upon my lord; still kept on, and gave a look, and went a little farther; then immediately turns round, and mounts his gun; he had his piece as usually men have when they shoot flying; and before I could speak my lord Onslow dropped.

Serj. *Comyns.* When he mounted his gun, did he take aim or level?

Fawks. Yes, he made a level as if he would shoot at his head.

Serj. *Comyns.* Which was nearest, you or my lord?

Fawks. I, rather; I was nigher my lord than he was.

Serj. *Cheshire.* Prisoner, will you ask this witness any question?

Serj. *Comyns.* I desire to ask this witness one other question. Had you any discourse with the prisoner afterwards?

Fawks. Afterwards, Sir, when?

Serj. *Comyns.* After, when he was in custody for this fact.

Fawks. Yes; when I went to him in the Marshalsea, I did ask him, why he shot my lord Onslow, and not me; because when he had rid away with my horse, when I met him afterwards, says I, Mr. Arnold, why did you do such a thing as to take my horse away? You don't know the consequence of it; you are guilty of felony. He said, I was a good man; my lord Onslow was not.

Mr. *Marsh.* I desire to ask one question. You say you was behind my lord riding in the same track, the same way as my lord was in; was that when the prisoner passed by?

Fawks. He was in the foot-path and turned back.

Mr. *Marsh.* Did you then see him aim his gun?

Fawks. I did. I can't say I saw him till he was passed; but he had his gun as they commonly carry them when they shoot flying; and he presently mounted his gun and fired.

Sol. for the Prisoner. We beg leave to know from the witnesses for the king, whether this prisoner was in disguise?—*Witnesses.* No.

Solicitor. I beg leave to ask them one other question; whether these gentlemen that give evidence for the king, whether they don't believe the prisoner to be a lunatic?

Just. *Tracy.* Will you ask this man any question?

Prisoner. I have nothing to say any more; I don't know what more questions to ask.

Just. *Tracy.* Mr. Fawks, whether did you take this man to be a lunatic?

Fawks. Most people that lived at Guild ford have known him, that he was always a surly, morose-temper'd man: as to his being lunatic, I know nothing of that; I am not a judge of that.

Mr. *Parsons* and Mr. *Flutter* call'd again.

Serj. *Cheshire.* How long have you known the man?—*Parsons.* Twenty years.

Serj. *Cheshire.* Do you take him to be a madman, or no?

Parsons. No; I took him for a morose, ill-natured man.

Serj. *Cheshire.* What is his behaviour?

Parsons. He is a sullen sort of a man, a dogged fellow.

Serj. *Whitaker.* How did he use to live?

Parsons. I don't know; he had a house.

Serj. *Whitaker.* How did he live?

Parsons. He used to go a-fishing and a-shooting.

Serj. *Whitaker.* Did ever any body restrain him from the use of a gun, as being a madman?

Parsons. I never heard they did.

Prisoner. I have had my gun go off several times in my hand; but never 'till now, had this accident.

Serj. *Cheshire.* He never before shot a lord in the shoulder. He can ask better questions when he holds up his head; but if his guilt makes him hold it down, I can't help it.

Serj. *Whitaker.* Mr. Fawks, since they have asked about his sanity, we will ask one question about what he said when he was in the Marshalsea, relating to this fact: Had you any discourse with him then?

Fawks. I told you when I spoke to him of the fact in the Marshalsea, I asked him, why he shot my lord Onslow; and not me, when I had told him of running away with my horse? He said, that I was a good man, and my lord Onslow was not.

Mary Smith sworn.

Serj. *Comyns.* Will you go on, and shew the preparation that was made for this fact?

Serj. *Whitaker.* Smith, do you know the prisoner at the bar?

Smith. Yes, I do know him.

Serj. *Whitaker.* How long have you known him?—*Smith.* I have known him several years.

Serj. *Cheshire.* Do you remember, that in August last—and tell us when he came to your shop? And for what purpose?

Smith. I was ironing; my daughter was at one end of the table, my face was next the door, my door stood open: and Mr. Arnold comes in, and said, Mrs. Smith, I want a quarter of a pound of powder, and a pound of shot; I told my daughter to serve him; my daughter served him; and as it is usual to ask what size, my daughter asked him, what size? Mr. Arnold asked, For the biggest you have; and so my daughter took the key, and went to the drawer where the shot was; Mother, says she, there is none of the biggest shot in the drawer; says I, Serve such sort as there is; and my daughter served the second size; and when she had served him, he took up the quarter of a pound of powder, and the shot, and laid down five-pence, and said, there is your money.

Serj. *Cheshire.* When was this?

Smith. The day that my lord Onslow was shot. I believe it was about an hour after that, people came running up by my door: I ask'd my daughter the meaning of that noise? My daughter said, My lord Onslow is shot.

Serj. *Cheshire.* Had you sold him shot before?

Smith. Yes; he was a pretty good customer.

Serj. *Cheshire.* For how long?

Smith. I can't tell how many winters; I believe, two or three years.

Serj. *Cheshire.* Did you look upon him to be a madman, and furnish him with powder and shot?

Smith. He used to ask for half a pound of powder, and three pound of shot, and laid down a shilling for it, which was the price I sold it for.

Serj. *Cheshire.* Did you at any of these times, for the space of three years you have furnished him, take him to be a madman?

Smith. No.

Serj. *Cheshire.* Would you have done this if you had looked upon him to be mad?

Smith. No; I looked upon him as sensible as any customer I had.

Serj. *Cheshire.* All that time?

Smith. Yes; all that time.

Serj. *Cheshire.* And the last time?

Smith. Yes, the last time.

Serj. *Comyns.* At the time when he came last, in what manner did he describe the shot?

Smith. When he came to the door, at first he asked for a quarter of a pound of powder, and a pound of shot: and, as is usual, I asked him, what size? And he said, the biggest size.

Serj. *Comyns.* Doth he use to buy the biggest size?

Smith. He never had any of the biggest size before.

Serj. *Comyns.* He never had any of that big sort before; did he ever use to come for a pound of shot? You say, he usually came for three pounds.

Smith. He usually came for three pounds.

Serj. *Comyns.* When he paid for it, how did he pay for it?

Smith. He paid five-pence in half-pence.

Serj. *Comyns.* Had he the change ready?

Smith. It was ready changed.

Serj. *Comyns* Five-pence changed; is that the common price?

Smith. Yes; three-pence the powder, and two-pence the shot.

Serj. *Comyns.* Is that the price of the biggest sort?—*Smith.* Yes.

Serj. *Comyns.* But he never had any of the biggest before?—*Smith.* No.

Serj. *Comyns.* He says it was rabbit shot.

Serj. *Cheshire.* I believe it was, because he could get no bigger.

Just. *Tracy.* (To the prisoner.) Will you ask that witness any question? (The prisoner made no answer.)

Mr. *Flutter* called again.

Serj. *Cheshire.* Sir, since you have been here, it hath been desired you might be asked, whether the prisoner is a madman? You have known him some time before this.

Flutter. I never was in his company.

Serj. *Cheshire.* But you have known him; you have known there was such a person.

Flutter. Yes.

Serj. *Cheshire.* Did you ever see, or hear that he was reputed a madman?

Flutter. I never had any conversation with him, but as other people have said.

Serj. *Cheshire.* Since this accident?

Flutter. Ay, since this accident.

Just. *Tracy.* Do you live near him?

Flutter. I live at Guildford, within a quarter of a mile of him.

Serj. *Cheshire.* Did you hear, before this time, that he was reputed a madman?

Flutter. I have heard he would do odd things, but I never heard that he was a madman. I know nothing of that; I never heard it.

William Smith sworn.

Serj. *Whitaker.* Pray, give an account, whether you see the prisoner at the bar the day this accident happened?

Smith. And please you, my lord——

Serj. *Cheshire.* This is the son of the witness, Mrs. Smith.

Smith. And please you, my lord, I was waiting for my lord Onslow's coming, to go a fox-hunting; it was between five and six in the morning: accordingly, I staid till past six; the hounds came, and my lord did not come: I was going up to Katharine-hill.

Serj. *Cheshire.* The place where this was done?

Smith. Yes. I was to go there to meet my father. Going along the upper Baron-field, I met Mr. Arnold; says I, Good morrow; and says he, Good morrow; this was in the morning about seven o'clock.

Serj. *Cheshire.* Had you any conversation with him?

Smith. And please you, my lord, I will tell you. I met the prisoner, and I says to him, Good morrow; Good morrow says he; says he, Is my lord Onslow gone a fox-hunting? Yes, says I, the hounds are come, but my lord is not come. He asked me whether my lord was come? I said, he was not, but the hounds were, and they were to stay at Mr. Searle's till my lord came. Says he, What, don't you go a fox-hunting? No, I said, I must go to farmer Dent's; I must go there to help to unload coal upon the hill: I went up the hill.

Serj. *Cheshire.* Had you any further discourse with him?

Smith. Only these three or four words.

Serj. *Cheshire.* You bid him the time of the day, and he asked for my lord Onslow?

Smith. Yes.

Serj. *Cheshire.* Had he his gun?

Smith. No, he had no gun; he had only his hand-basket upon his arm, coming to Guildford.

Serj. *Cheshire.* At that time; you have known him some time?

Smith. Yes; these ten years.

Serj. *Cheshire.* By his behaviour that morning, or at any other time, did you look on him to be distracted?

Smith. No; I never did. I have been out a fishing with him; and sometimes he would talk very well, and sometimes he would not give me a word.

Serj. *Cheshire.* Did he behave himself a fishing as other people do, that understood the art?

Smith. He was more clumsy at it, and would have strong tackle.

Serj. *Cheshire.* Some are more artists than others.

Serj. *Whitaker.* How was he for fowling?

Smith. For fowling, I can't say as to that.

Serj. *Whitaker.* You have known him carry his gun?

Smith. Yes, frequently: I have been out, and met him with his gun frequently in the summer time when the rabbits were out.

Serj. *Cheshire.* What, he is a notable marksman at the head of a rabbit?

Smith. I can't say nothing to that.

Serj. *Cheshire.* (To the prisoner.) Will you ask him any question?

Prisoner. I do not know what to say to it.

Serj. *Cheshire.* If you will tell me any question, I will ask him for you.

Prisoner. If you please, I don't know what to ask him.

John Sturt sworn.

Serj. *Cheshire.* Pray, will you tell my lord and the jury, whether you saw the prisoner at the bar that day my lord Onslow was shot?

Sturt. Before he shot my lord Onslow, he called at my house, and asked, if my lord's hounds were out a hunting? I told him, I did not know; with that he stood humming and talking to himself, swearing and cursing, and damned my lord Onslow several times; and stood so for near a quarter of an hour.

Mr. *Marsh.* Did you ask him any reason, why he did so?

Sturt. Yes, I did, but he would give me no answer, not a word.

Serj. *Cheshire.* Do you remember you heard a gun go off?

Sturt. Not till he shot my lord Onslow; not before.

Mr. *Marsh.* Did you ever hear him say any thing, by way of threatening?

Sturt. He swore and cursed: says he, God damn him, if I see him, I will shoot my lord Onslow.

Mr. *Marsh.* How long was this before?

Sturt. About a quarter of an hour.

Mr. *Marsh.* How far was your house off where my lord was shot?

Sturt. Not above two stones throw.

Mr. *Marsh.* How long have you known this man?—*Sturt.* From a child.

Mr. *Marsh.* Have you known him carry a gun?—*Sturt.* Yes, several times.

Mr. *Marsh.* At this time, or any time before, did you take him for a madman?

Sturt. He never talked much sense; he talked to himself: he would sit and rave to himself.

Prisoner. I never was guilty of swearing.

Sturt. He asked me for a mug of beer: No, says I, you have had too much already.

Serj. *Cheshire.* Did you take him to be in drink?—*Sturt.* Yes, I did.

Sol. for the Prisoner. We desire that this person may be asked, whether he did not believe the prisoner to be a madman, and void of reason?

Just. *Tracy.* What do you say to that question? Did you not take him to be a distracted man, a madman?

Sturt. I did not take him for a sober man; I thought he was not right in his senses, he took to swearing so much.

Serj. *Cheshire.* Did you take that to proceed from drunkenness, or from lunacy?

Sturt. I don't know; he hath sat and swore to himself several times: he would talk strange things.

Solicitor. We desire to know what these strange things were?

Just. *Tracy.* Do you know what those strange things were?

Sturt. I have heard him swear; he would talk inwardly to himself, that I could not distinguish.

Just. *Tracy.* Did you ever know him to do any hurt?—*Sturt.* No.

Solicitor. We desire to know whether this man hath not often declared, he thought him to be a madman?

Sturt. We did not take him to be in his right senses: he was very often so, a great many of the neighbours know it.

Just. *Tracy.* (To the prisoner.) Would you ask him any question?

John White sworn.

Serj. *Whitaker.* Sir, look upon the prisoner, and tell us, whether you see him that morning my lord Onslow was shot?

White. Yes, I did.

Serj. *Whitaker.* Whether you see him with a gun, and what he said?

White. I was at a house, which is called ——— at the Hope and Anchor, at Katharine-hill, and while I was drinking a pint of beer, I heard a gun go off; some time afterwards, this Edward Arnold comes in, with his gun in his hand: being acquainted with him, I took hold of him by the coat, to look under it, and asked him, if he had shot a rabbit? He said, No: Nor a bird? No: What, did you shoot nothing? No, it was only to discharge my gun.

Serj. *Whitaker.* What time was this?

White. Upwards of nine o'clock; near half an hour, as nigh as I can guess, before my lord Onslow was shot.

Serj. *Whitaker.* The reason he gave was, it was to discharge his gun?—*White.* Yes.

Serj. *Whitaker.* Do you know any thing further, as to a new charge?

White. No; he went out at one door, and I at another.

Serj. *Cheshire.* Did he use to carry rabbits under his coat, concealed? Because you looked there?

White. I had a mind to know if he had shot a rabbit.

Serj. *Cheshire.* Did he carry a gun formerly?

White. Yes, in his youthful days, when his father was living.

Serj. *Cheshire.* Did he not use frequently to carry a gun?

White. No, not frequently.

Serj. *Cheshire.* When did you see him before with a gun? Have you seen him within a year?

White. I can't positively answer, whether I have, or no; I believe I have.

Serj. *Cheshire.* Did you ever take him for a madman?

White. No; I did not take him for a madman, or a wise man, nor a fool; he was cunning enough in his dealings.

Serj. *Cheshire.* What observations have you made as to that?

White. When I did any work for him, I was as much troubled to get my money, he was so near.

Serj. *Whitaker.* Near? What do you mean?

White. Without you made a bargain with him, he was a hard man to deal with; but he would pay honestly, and justly.

Serj. *Cheshire.* When you said a hard bargain, I suppose, by that you mean, he would pay as little as he could, and have as much as he could for his money?—*White.* Yes.

Just. *Tracy.* You talk of him as a man that had dealings, what business did he follow?

White. No, my lord, it was only for his apparel.

Just. *Tracy.* You are his taylor?

White Yes, my lord.

Serj. *Cheshire.* Have you heard him say any thing of my lord Onslow?

White. No, not lately.

Serj. *Cheshire.* When did you? You are upon your oath, therefore pray recollect yourself.

Serj. *Whitaker.* How long before this shooting at my lord Onslow was it, that you had any discourse with him about my lord Onslow?

White. It was some time before; but to say justly how long, I can't: I happened to be in his company: I took him to be amiss; when

ther he was in drink, or no, I can't tell. He asked me, if I knew my lord Onslow? I told him, Yes. He asked me, What sort of a man he was? I said, Doubtless, a very good man. He asked me, if my lady was a good woman? Yes, certainly, a very good woman, I never heard the contrary. Whether he was in liquor or no, I can't say: Says he, turning himself about, Why doth she not cut his throat?

Serj. *Whitaker.* Repeat the words in the manner he said.

White. He spoke, as his speech is low, and the like; after that he had asked me these questions, he made a hum, Why don't she cut his throat?

Serj. *Comyns.* Did he give any reason why he said so?

White. No, I left him; and I said, God mend you. I went away, and left him.

Serj. *Whitaker.* The morning you see him, what temper was he in? How did he appear to be that morning he shot my lord Onslow?

White. He seemed to be in as sedate a temper as ever I saw him in my life.

Serj. *Whitaker.* I desire another question; Did you ask the reason of his discharging his gun?

White. What, about charging again? Nothing further passed: he drank his beer, and went out at one door, and I at another.

Serj. *Whitaker.* You had no talk of a fresh charge?

White. No, I don't remember we had any.

Mr. *Marsh.* You say you got hold of him, thinking he had shot a rabbit, whether you did not do that, because he went after that game?

White. His father kept grounds where were a great many rabbits, and he used to use it then.

Serj. *Comyns.* Had you any discourse with him after his shooting my lord Onslow?

White. I did, in good-will, call to see him in the Marshalsea.

Serj. *Comyns.* What passed then?

White. I asked him how he did, and he asked me the same; and he asked me what people said? Says I, I am sorry for it, but the vogue of the people of our town is, that you will be hanged, and your friends are in great grief for you; and if that be the case, I advise you to get good books, and repent; and he answered, He did not desire that any body should be concerned for him.

Serj. *Cheshire.* Did he talk rationally?

White. As at other times: we drank a mug of ale together, and so we parted.

Mr. *Marsh.* Had you any talk about my lord Onslow being dead?

Serj. *Cheshire.* At any other time, whilst he was in the prison at Guildford, in the house of correction?

White. I had like to have forgot; I did go to him one time, when he was in the house of correction, and I told him, my lord Onslow was dead; and he said if he was dead, he could not help it; and said no more.

Mr. *Allen* sworn.

Serj. *Cheshire.* I think, Sir, you have the honour of acting in the commission of the peace?

Allen. I have the trouble of it, I don't think it any honour.

Serj. *Cheshire.* Pray tell my lord and the jury, what you know of this matter.

Allen. My lord, I live at Guildford, and hearing of this sad accident I went down to the house of correction, and examined him, and I found him in a very sullen mood, and I could get nothing out of him for a long time, and he could not look me in the face: with a great deal of difficulty and persuasion, at last he expressed himself thus: I don't trouble my lord Onslow, why do you trouble me? And he had been pretty much teized and baited by the people, exclaiming against him, and coming into the prison to see such a monster. I thought the next day, after he had slept upon it, he might be in better temper, so I left him then, and went again the next day, but I did not find him so; for he run on with abundance of vehemence against my lord Onslow, and that he was the author of all the tumults, disturbances, and confusions, and wicked devices, that had happened in the country. I asked him, what was the reason of his animosity; and if any person had given him any occasion to say so? He said, No, but he was a very ill man; and repeated the same, that he was the author of all the confusions, tumults, and noise, and wicked devices; that he had over a hundred times, he was very fond of those words, 'wicked devices.' In the course of his examination, I took a great deal of pains several times; I put the same question several ways, to see if he would be brought to answer, and he would be silent. What surprised me, he all of a sudden starts up, and looks me in the face, says he, Where is the king? The king, said I! what have you to do with the king? Says he, The king is in fault, as well as my lord Onslow. The king! what doth the man mean? He answered me as regularly, and as fast, as I put the question. Says he, he put my lord Onslow upon doing and making these disturbances in the country, or he suffers him to do it. Says I, Have you seen the king? Yes, says he, I have seen him once. Somebody came in and said, he had been at London to see the king; says I, Did you go to London to speak to the king? Yes, I did go to see if I could come at the king, to see if he could not mend the matter; and several times he started up, and said, Where is the king? Is the king come home? And he said, When he came to London, he was gone abroad; and so they told him he was still abroad.

Sol. for the Prisoner. My lord, we desire to ask this gentleman this question; whether after this examination of him, which he took at the house of correction, he did not declare he believed him to be a madman and out of his senses?

Allen. Some time after this, I met his sisters, very worthy gentlewomen—

Serj. *Cheshire.* Whose sisters?

Allen. The sisters of the prisoner, Edward Arnold. As to the question, whether I have not several times said, I looked upon him to be a madman?

Solicitor. Whether you did not declare, after you took his examination, that you believed Mr. Arnold to be a lunatic, or a madman?

Allen. I remember, some days after I had examined him, I met with two of his sisters, gentlewomen of very good reputation. They knew me first, and told me who they were: I being short-sighted, could not so soon recollect them, and in the night-time; and they represented to me, how miserably affected they were with this sad accident; and I said, To be sure, it is very deplorable. They replied, To be sure, my brother is mad; without he had been mad he would not have done so: why, says I, that is the best turn you can give to it. His behaviour is very extravagant, that I did say; so it was, to be sure: what could I have said? Would you have had me told the ladies what a rogue they had for their brother?

Serj. *Cheshire.* Did you know him before?

Allen. No, I did not.

Solicitor. My lord, he doth not answer the question; he doth not say, whether he did not declare, that he believed him to be a madman.

Allen. I never did, as I remember. In my opinion, he was very much out of the common way of men, in the whole course of his life, and his proceedings, as far as I could gather from his own behaviour, and the course of his examination: but that I said he was a madman, I cannot remember.

Solicitor. If you please, Sir, one word more: whether the prisoner, at the time that he was in the prison, did not desire Mr. Allen to shoot him through the head? And whether Mr. Allen did not declare the same?

Allen. He said he was willing to die, Why would not my lord Onslow shoot him, or give him a gun, and he would shoot himself? I am willing to die; for I am not willing to bring my friend into trouble.

Serj. *Cheshire.* Pray tell the occasion of his saying, he would not bring his friend into trouble.

Allen. The occasion that drew him into that, I had a notion, that somebody must set him to work, the act appeared so unprovoked, and premeditated. When I examined as to that circumstance, especially when he said, my lord was the author of those tumults and disturbances, I asked him, What disturbances? He said, At the last election; and wherever he went, people still damned and cursed my lord Onslow. Says I, Did you ever mention any thing of this design? He told me, He had long and deliberately intended to murder my lord Onslow.

Serj. *Cheshire.* How long?

Allen. Ever since last horse-race was twelve-month; and he had communicated such his intention to his friends, and they had encouraged him in it.

Serj. *Cheshire.* Did he name any body?

Allen. He did name two persons to me.

Serj. *Cheshire.* We desire they may be named.

Just. *Tracy.* What persons did he name?

Allen. He named them as persons that he had communicated his intention of murdering my lord Onslow; and they approved of it.

Solicitor. My lord, if I am rightly instructed, these very persons he had named, they are friends of my lord Onslow. Our defence is lunacy; and if he declared persons that are friends of my lord Onslow, it is an argument for us; and that is the only reason why we desire Mr. Allen to answer to your question.

Allen. As soon as ever he named the two persons, says I, There are several persons in the town of the same name; but who were his advisers?

Just. *Tracy.* You don't say that he said they were his advisers?

Allen. No, not his advisers; they approved of it, and encouraged him in it; and when he found me solicitous to fix who those persons were, as I thought it behoved me to be, he would have recalled his words; says he, Do you think I will bring my friends into trouble? No; I am willing to die; why don't they kill me? Why don't my lord Onslow kill me? Why don't he let me have a gun to kill myself by? Says he, I won't bring my friends into trouble.

Serj. *Cheshire.* After he had named the persons, and you pursued the enquiry, then he drew in his words?

Allen. Yes, after he had named them; but he would not bring his friends into trouble.

(After some dispute about naming or not naming)

Serj. *Cheshire.* Then I ask you, and desire you'll declare upon your oath, were those persons that were so named by the prisoner remarkable friends, and in the interest of my lord Onslow, or opposed him in his interest?

Allen. They very remarkably opposed him, and were ever understood to be bitter enemies to my lord Onslow.

Sol. for the Prisoner. My lord, I desire to know of this gentleman, whether Mr. Arnold did not desire him to shoot him through the brains, or words to that purpose?

Allen. No, my lord; I don't remember those words: his words I remember, for I reduced them into writing. I would have taken it by way of confession; but he was so stubborn, that I suppose if I had offered to produce pen, ink, and paper, and take the words from his mouth, he would not have said one word: but in a few days I reduced them into writing; and I do remember very well he said he would shoot himself: Why don't my lord Onslow shoot me? Let me have a gun, that I may shoot myself: but I don't remember brains to be mentioned.

Solicitor. We desire, my lord, to know, whether all the persons named were friends or enemies to my lord Onslow?

Allen. He named but two to me.

Serj. *Cheshire.* My lord, we have gone through the king's evidence; and we reserve what is our duty to reply, if there be any occasion: at present we rest it here.

Just. *Tracy.* Prisoner, you know what is doing; you are upon your trial for your life; the counsel for the king have gone through their evidence; have offered all that they think material against you; you have heard all that hath been offered against you: now it comes to your turn to make your defence; what say you for yourself?

Prisoner. With humble submission, I don't know what to say. May God forgive; if it is my fault, I am sorry for it. I don't know what to say more.

Just. *Tracy.* What have you said? Repeat what you said.

Prisoner. With all submission to your lordship, I don't know what to say. I ask pardon for all my offences and faults.

Just. *Tracy.* How came you to attempt this?

Prisoner. I don't know how it happened.

Just. *Tracy.* And what was the cause? It don't appear that this noble lord ever did you the least injury. Call your witnesses for the prisoner.

Sol. for the Prisoner. Nathaniel Arnold.

Nathaniel Arnold sworn.

Just. *Tracy.* Sir, you are called here on the behalf of the prisoner; what can you say?

Arnold. My lord, he is my brother; I have known him a great many years; I am sorry I am come to speak any thing on such an occasion: I know him to be a madman; therefore I hope I shall shew such things of him, that the Court will think him so. I have declared to my lord Onslow, that I have no intention to skreen him from punishment; but to endeavour to save him from the gallows. My lord, when he was young, my father hath tried to put him apprentice to two or three several places: it signified nothing; he came home again: afterwards Mr. Ford, who is a brewer at Guildford, persuaded my father to let him be with him: he took him, he used him like his child, laid him with his son; but he would not stay: he was at other places. Some time afterward he had a mind to make me a visit at London: I knew what an ill-natured fellow he was to my father and sisters: I would have persuaded him to stay with me; that would not do. Afterwards I had a commission from my father to allow him 15*l.* a year, and send him into Yorkshire. I writ a letter to an acquaintance there, and had a place provided for him, equipped him with clothes, and sent him down: he came back again. Nothing we could do would govern him, he seemed so like a madman. When my father died, he left him 5*l.* a quarter. He would lay under barns, hay-ricks: I have caught him under my own hay-rick in a morning, when he might have lain in his own bed. He had a house in the neighbourhood; but he had never a stool, or a pan, nor nothing at all in it. I don't know whether he had a chair, but there was no bed. We could not persuade him off this: we would let him have money.

Just. *Tracy.* He would live by himself.

N. Arnold. He lived by himself; and he hath known when quarter-day hath come, because people have dunned him for money; this White the taylor, Sturt the alehouse-keeper. And as soon as I came, and he had notice, he would dart down the hill to me, where I have been surprized by his looks: sometimes I gave him good words, sometimes bad; sometimes I gave him a little drink, sometimes none, for fear: he appeared as much like a madman as ever any body did.

Serj. *Cheshire.* You are his brother, and you would save him from hanging; it is natural, and I don't discommend you. You are upon your oath; and justice must be done. Sir, let me ask you, whether you looked upon yourself to be a madman in treating him in this manner?—*N. Arnold.* No.

Serj. *Cheshire.* You say this man had his memory return very quick every quarter-day; as soon as that came, he would come to you for his money: did you ever refuse it him, because he was mad, and not fit to be entrusted with it?—*N. Arnold.* No, I never did.

Serj. *Cheshire.* At the several times he was put apprentice, like an untoward boy, he would run away; did you look on that as a sign of madness? Then he was put to a brewer, did the person you treated with, or you, look on him to be a madman?

N. Arnold. I did understand that he thought him disordered in his brain.

Serj. *Cheshire.* As every untoward boy is; when you sent a letter into Yorkshire only, and no person with him to take care of him, would you, if you had thought him distracted, have sent him alone to provide for himself?

N. Arnold. We did not send him alone, but we sent him on ship-board; I sent down to a person to take care of him when he came there; I did not think him so much a madman as to be chained.

Serj. *Cheshire.* Would you take it to be proper, you that are his brother, to send him on ship-board into a country he had never been in before, only on a recommendation of a letter, if you had thought him so mad as not to be able to provide for, and govern himself?

N. Arnold. I sent him to one that was my customer.

Serj. *Cheshire.* Did you observe in those letters that he was mad?

N. Arnold. No, I did not.

Serj. *Cheshire.* Then in these several passages that he was too sharp for you, is that a sign of a madman? Are these your sole reasons because he acted like a naughty man, that he was a madman?

Serj. *Whitaker.* If he was distempered, why did you not let him be confined?

N. Arnold. I did not think him so much a madman as to confine him.

Serj. *Whitaker.* I would ask you, on your own knowledge, can you give an account of any thing that he hath done, but as a sullen or cruel man?

Mr. *Marsh.* You don't look upon him so mad as to be chained?—*N. Arnold.* No, I did not.

Mr. *Marsh.* Did you put him under the care of any person?

N. Arnold. No, I did not; he lived at large.

Mr. *Marsh.* Did he ever live with you?

N. Arnold. Yes, he did.

Mr. *Marsh.* How did he behave himself then?—*N. Arnold.* Very oddly.

Mr. *Marsh.* As how?

N. Arnold. As a madman, I thought.

Serj. *Cheshire.* Whether or no did he use to carry a gun?

N. Arnold. Yes, often in his father's time.

Serj. *Cheshire.* He used to use a gun?

N. Arnold. He used a gun in my father's time.

Just. *Tracy.* And hath he done so since?

N. Arnold. Yes, several times; and I have seen him with one several times since.

Serj. *Cheshire.* Why did not you take it from him, as he was a madman?

N. Arnold. He was my brother, and I did not care to oppress him.

Serj. *Cheshire.* Now you would have prevented him from doing this mischief, if you had done so. Did you ever farm any land?

N. Arnold. I have.

Serj. *Cheshire.* Did you ever employ him?

N. Arnold. I have employed him in raking of hay or barley.

Serj. *Cheshire.* Did you find he brought it together, or scattered it about.

N. Arnold. He brought it together, but in such a manner, not right as a workman ought to do.

Serj. *Cheshire.* Ay, he was a naughty untoward boy from his youth.

William Arnold sworn.

W. Arnold. The prisoner at the bar is my brother; I believe him to be a madman.

Serj. *Cheshire.* Give your reasons.

Just. *Tracy.* What, is he a lunatic?

W. Arnold. He is not perfect in his senses; he did not know what he did at some certain times: I cannot say he was always so.

Serj. *Cheshire.* Go on, and give your reasons.

W. Arnold. In my father's time I have heard him curse him, and call him wicked and abominable names, without any provocation: I have heard him talk to himself, sometimes catch at his words, sometimes break out into passions of cursing and swearing, without any provocation: after this I have observed him to burst out into a foolish laughter, and grin like any madman: if you asked him what he talked of, sometimes he would give an answer, sometimes not. This I have observed several times; as to the particular times, I cannot set it forth; but this, as to the general, that I sometimes have dreaded him. Sometimes he would be pretty rational, and act like other men.

Serj. *Cheshire.* Do you take that for the sign of a madman, to do a very wicked thing?

W. Arnold. Madmen do very wicked things.

Serj. *Cheshire.* Do you take all to be madmen, that do wicked things?

W. Arnold. Some do wicked things for the sake of profit and gain.

Serj. *Cheshire.* Was you one that paid him any share of this allowance?

W. Arnold. I am concerned: my father left a small matter to my brother and me, to pay him 5*l.* a quarter; and my brother commonly pays him: I have asked him about it sometimes; and he said, the prisoner would run in score, and then persons would dunn him.

Serj. *Cheshire.* How do you know this?

W. Arnold. I have heard my brother say this.

Serj. *Cheshire.* Then you know nothing but what your brother told you?

W. Arnold. I know my brother owed money.

Serj. *Cheshire.* The people used to trust him.

Serj. *Cheshire.* Mr. Nathaniel Arnold, Sir, when you paid him his quarterage, did he give you a receipt?

N. Arnold. I always writ the receipt, and he signed it.

Serj. *Cheshire.* Did you not read it over to him, or let him read it?

N. Arnold. Yes, Sir.

Serj. *Cheshire.* At quarter-day he would be pretty well in his senses?

N. Arnold. Because he was dunned for money.

Serj. *Cheshire.* Did not he and you use to write and confer by letters?

N. Arnold. Never in my days, as I know of.

Just. *Tracy.* Can he write?

N. Arnold. Yes, he can write.

Just. *Tracy.* (Asks Mr. William Arnold.) Did you never write to him?

W. Arnold. I don't know? it is a great while ago if I did.

Serj. *Darnell.* As to what you were speaking when he ran a score, did they use to put him in mind of his quarterage?

W. Arnold. Those persons he owed money would dunn him.

Serj. *Darnell.* And when they did dunn him, did you apprehend he knew what they meant by it?—*W. Arnold.* Yes, he might.

Serj. *Darnell.* When he was told quarter-day was at hand, what would he do?

W. Arnold. I can't say, but he hath dunned my brother for money.

Serj. *Darnell.* When?

Both. When he hath wanted, and had not money in his pockets.

Serj. *Darnell.* Did he never tell you that he had debts to pay?

N. Arnold. Yes, he hath.

Serj. *Darnell.* What do you mean when you say, he was sometimes in his senses, and sometimes not; how often were those intervals?

N. Arnold. I can't say it.

Serj. *Darnell.* Did you never observe some men of discretion act indiscretionally?

N. Arnold. Yes certainly, I may have done it myself.

Mr. *William Arnold* proceeds.

The 10th of July last he came to my house in Cannon-street; I finding of him there, I asked him what brought him to town? he said, he could not tell. What business have you in town? It is not a proper place for you; you have not much money to spend: Besides, you may fall into bad company. Says he, I come to see you, I think; what else have I to do? says he, I can't be easy; my lord Onslow hath bewitched me; he plagues me day and night; I can't eat or drink; if I eat any thing, it comes up: I am, says he, as if they pumped the breath out of my body.

Just. *Tracy.* How long ago is this?

W. Arnold. The 10th of July last. I then asked him, why he was so concerned about my lord Onslow; doth my lord know you? says he, I don't know that he doth: When did you see my lord? Says he, I don't know; not this great while: Why are you so disturbed, then, about my lord? Have you been shooting in my lord's manor? No. Says I, Pray be easy; don't disturb yourself with these wild notions; pray be easy. I then gave him some good words, and I gave him something to eat, and made him promise to return home, and be easy; which if I would give him money to return home, he would do, as he did promise me he would: And that was the last time I saw him before this unhappy accident of my lord Onslow's.

Serj. *Darnell.* Did he give you any other reason of his coming to town?

W. Arnold. I don't remember he did: After some hesitation, and a very wild look, he said, I am come to see you, I think.

Serj. *Cheshire.* Give my lord an account, whether or no, when he was talking wildly against my lord Onslow, did he tell you who put him upon that?

W. Arnold. If you please, I have asked him these questions: How come you to do this wicked act? did any body put you upon it? No, says he. I am sorry you have done this vile action. Did my lord Onslow give you any provocation? Or any body set upon you to do it? Says he, My lord Onslow hath bewitched me, was always a plague to me, and was the plague of the whole country; and several things to the same purpose.

Serj. *Cheshire.* You talk you gave him money and drink, I suppose you gave him both.

W. Arnold. I gave him victuals and drink, and money in his pocket, provided he returned home, which he promised me he would do.

Serj. *Cheshire.* If you looked upon him as a madman, why would you give him money, and be satisfied with his promise that he would return home?

W. Arnold. I never knew that he attempted to do any body mischief.

Serj. *Cheshire.* How did you know but he might do you or himself a mischief? pray answer the question, and be consistent; you have said, you looked upon him as a madman, and that he could not give any good reason why he was come to London, but said, he is come to see you, he thinks; and you gave him money, and victuals, and drink, on his promising you to return home again; did he return home?

W. Arnold. I thought he did.

Serj. *Cheshire.* Now the great question is, Whether he or you are the madman?

W. Arnold. I submit that to you. I did ask him where he lodged; but I could not get it out of him.

Serj. *Whitaker.* Did you rely upon his promise that he would go home?

W. Arnold. I can't say I did entirely depend upon it.

Mr. *Marsh.* You say, the tenth of July your brother came to see you in London, and expressed uneasiness in being plagued by my lord Onslow; did he say he would do any thing by way of plaguing my lord Onslow?

W. Arnold. No, he did not.

Mr. *Marsh.* Mr. Nathaniel Arnold, did you see him then?

N. Arnold. No, I was not there.

Mr. *Marsh.* Did you hear him at at any other time say any thing of my lord Onslow?

N. Arnold. I have heard him say my lord Onslow had bewitched him.

Mr. *Marsh.* Did you hear him express any resentment, or that he would make any retaliation?

N. Arnold. No, nothing at all of that.

W. Arnold. I did wait on my lord Onslow when he used to lay to sir More Molyneux's lodge.

Serj. *Cheshire.* He used to be there to destroy his game.

W. Arnold. I don't know; I never see him there. I did wait on my lord Onslow; I humbly begged his lordship's pardon; but I did really believe him to be a lunatic.

Just. *Tracy.* If you apprehended him to be a lunatic, and deprived of his senses and understanding, you should have taken more care of him.

N. Arnold. It was only at some certain times; perhaps more in the spring and fall than at other times: I never knew he did any harm before.

Serj. *Darnell.* Don't you know of any harm he did to one of his sisters?

W. Arnold. He hath struck her; I did not see him; I was abroad; but when I came home, she complained to me that her brother had struck her.

Serj. *Darnell.* What was her name?

W. Arnold. Elizabeth Arnold. I talked to him about it; he would laugh at it.

Serj. *Darnell.* Did you take it to be the effect of passion or madness?

W. Arnold. I don't know any reason he had for doing of it.

Serj. *Darnell.* Did not you apprehend that some care ought to be taken of him?

W. Arnold. My father was then living; so I had nothing to do with him.

Serj. *Darnell.* What have you known of any thing he hath done to his father?

W. Arnold. I have known him abuse him, and call him names, without any provocation. And my father, at the request of those that were about him, about ten years ago, ordered me to go to the late lord Onslow, and desire him to grant a warrant; for his neighbours had advised him to send him abroad, in hopes that might reclaim him: And at the bench of justices at Guildford he was by them taken up and listed, as a marine; he went to the Baltic, but did not stay long; the first opportunity he ran away, and came home again naked and out of repair.

Serj. *Darnell.* I think you was talking of his being sent on ship-board.

N. Arnold. That was when I would have sent him to Yorkshire; but he would not go.

Serj. *Whitaker.* Mr. William Arnold, you say he was sent abroad by the late lord Onslow; have you heard him express any resentment to my lord Onslow, by reason of his being sent abroad?

W. Arnold. I never did hear him myself, but I inquired of the neighbours, who said, that as my late lord Onslow had sent him for a soldier people would say, if you don't behave yourself well, my lord Onslow shall send you for a soldier again; and that run in his head, and he never could get it out again.

Mr. *Marsh.* He came away from his ship without leave?

W. Arnold. Yes, I believe he did without any leave.

Serj. *Darnell.* Was you never told that this prisoner threatened my lord Onslow?

N. Arnold. Never, before this accident happened.

Serj. *Darnell.* Not by any servant of the house?

N. Arnold. I don't know that any body told me he had threatened the life of my lord Onslow.

Serj. *Darnell.* What did the servants tell you relating to my lord Onslow?

N. Arnold. That my lord Onslow had bewitched him.

Serj. *Darnell.* Did they tell you of any resolution he had took upon that?

N. Arnold. No.

Serj. *Darnell.* Nor of any thing he would do?

N. Arnold. No, I don't know that they did; I don't remember it.

Mary Arnold sworn.

My lord, I have seen the prisoner several times under great disorders, insomuch, that I took him for a man out of his senses at sundry times. I have been in the family eleven years; and to the best of my knowledge I never heard him speak six sensible words together: and after the death of my father he left the house. Before the death of my father, I went down every summer. I have seen him in great disorder. One fine day in the summer-time, his sister, his own sister, went into the garden; they kept a dairy, and the pots, and the milk-pans were out, and he threw a stick, and she reproved him, Pray don't you, says she, you'll break the milk-pans: he catches it up, and threw it at my sister, and struck her with it about the temples; with that, she fell into a passion of tears, had like to have fainted away; we got water, and recovered her; but we were afraid he had prejudiced her eyes, and that she would lose the sight of one of her eyes.

Just. *Tracy.* What, with any hurt he had gave her?

Mrs. *Arnold.* Yes, my lord, and we sent for Mr. Thomas Howard, and he came to us: I don't remember whether it was just then, but he came that day and let her blood. After the hurry and surprize, I went to him, and reproved him severely, and asked him, how he could do such a wicked thing to his own sister? He laughed at me, and I drew back, for fear he should do me a mischief. Then I did declare, that I believed that he was, at times, a madman. When he sat at table, he would not sit like other people; he would put his fingers out, and had strange, surprising, antic ways, which I never did see in any person in my life before. An after the death of my father, he laid at an old woman's house, that used to weed in the garden, and when she and I have talked about Edward, the old woman would say, Depend on it, Mr. Edward is a madman.

Just. *Tracy.* It is no matter what she told you, what is your observation?

Mrs. *Arnold.* It was always my opinion: he would do several surprising things.

Just. *Tracy.* What, you are the wife of Mr. Nathaniel Arnold?

Mrs. *Arnold.* Yes, my lord, I am.

Serj. *Cheshire.* How long ago is it that you made these observations?

Mrs. *Arnold.* I have lived eleven years in the family: it is about five years since.

Serj. *Cheshire.* You knew him before?

Mrs. *Arnold.* Yes.

Serj. *Cheshire.* How came you to observe it then, and not before?

Mrs. *Arnold.* He was always a very strange, unaccountable poor creature.

Serj. *Cheshire.* But you reasoned with him, why would you throw the stick at my sister?

Mrs. *Arnold.* I did.

Serj. *Cheshire.* Did you talk to him as a madman? Why would you use and talk reason to a madman?

Mrs. *Arnold.* I used to reason with him.

Serj. *Cheshire.* Did you never speak to them, that care should be taken of him, and he ought to be put under somebody's care?

Mrs. *Arnold.* I have often persuaded my

brother, and Mr. Arnold about him: he lived by himself; he was not mischievous out of the house; we never was afraid of him; about his sister, that was the only mischief he did.

Serj. *Cheshire.* And you reproved him then?

Mrs. *Arnold.* Yes; and after that time he did not come in sight of any of the family.

Serj. *Cheshire.* Did you hear of his behaviour out of your sight, that it was in a disorderly, distracted manner?

Mrs. *Arnold.* I have heard talk so.

Serj. *Cheshire.* If you apprehended it to be so, would not every body be amazed, that nobody took care of this poor brother?

Mrs. *Arnold.* It was hard to confine a poor creature; his father did not think fit to do it. The last time I see the prisoner, he came to my house; it was about a month before he committed this fact; and as I was sitting, he came in at the back-door, and in a great confusion. I had a niece with me, that had never seen him before; says I, Don't be frightened at him, he won't hurt you; but he talked very much, and look'd extremely wild, and he sat in a strange manner, and my maid reprimanded him for sitting so: says I, Will you have a dish of tea? No, he would have some beer. I ordered them to mix it with some small-beer, for fear of making him worse. He talk'd extremely inwardly; says I, Speak out like a man, if I can answer you, I will. He told me he was bewitch'd; he talk'd to himself, and I heard him curse several times: says I, Who hath bewitch'd you? He told me, The imps. I asked him what he meant by imps? He told me, they danced in his room all night, and he could not lie in his bed for them, and the devil did tempt him, and the imps stood by his bed. After some time, he would have another mug of drink, but I would not give it him: I told him, As for this, it is for want of going to church, and employing yourself in good things. To this he said, My lord Onslow, why should I be plagued by him? But to the best of my knowledge, I never heard any thing about my lord Onslow before, or of the person he had in his mind.

Eleanor Arnold sworn.

Mrs. *Arnold.* I believe this poor prisoner to have been distracted for near seven years, and in all that time, he hath not been capable of forming any design, or plotting any thing against any body, but hath lived in a rambling, distracted way. The 20th of last August, he came to the parish church of St. Nicholas, in such a manner, that several of the congregation observed him to be distracted, and told me so, and spoke of him to me. He then appeared to me in a dismal agony, and quite out of his senses. The same day, after my lord Onslow was so barbarously shot, I see Mr. Justice Allen, and asked him, if he had seen my brother? Mr. Allen told me he had, and had been with him twice since. I asked him, if he thought my brother to be distracted? Mr. Allen said, he appeared to him to be so, and to be an enemy to all mankind. I asked him, if the prisoner had given him any account how he came to do such a horrid fact? Mr. Allen answered, That this poor prisoner desired him several times to shoot him through the brains. I know it is reported, that he is not distracted, but I affirm it to be otherwise: I have seen him for nine hours together, talk nonsense; sometimes curse and swear without the least provocation. and if your lordship will give me leave, I can relate several facts, as instances of his being distracted. My lord, sometimes, when we have gone out, he hath got the fuel, swept it up together, and made it up into a great fire, as if he would fire the house. I have seen him take live coals out of the wood fire, and throw them into his father's plate: he would often talk to himself several hours: sometimes he would be in the most tormenting agonies: and I do declare I have been in terrible frights, for fear he would do some murder.

Serj. *Cheshire.* If you apprehended your brother in these melancholy circumstances, why did not you take care of him?

Mrs. *Arnold.* We applied to the minister of the parish, who was a very good man, Mr. Woodward, and desired that he would endeavour to reclaim him: he talked to him, but at last, he declared, he ought to be put into some mad-house.

Serj. *Cheshire.* When was this?

Mrs. *Arnold.* About five years ago.

Serj. *Whitaker.* Was there any discourse of applying to a physician, &c.? You say a minister made use of means to reclaim him, I don't hear of any physician consulted.

Mrs. *Arnold.* He never had any physician, to my knowledge.

Serj. *Whitaker.* Had he ever any physician, or any care taken of him, as if he was a madman?—Mrs. *Arnold.* No.

Just. *Tracy.* He hath struck you?

Mrs. *Arnold.* No, not me; it was another sister.

Serj. *Darnell.* Did you apprehend from any of these circumstances, that he was like to do mischief?

Mrs. *Arnold.* Sometimes I have been afraid of it: he would make a great fire, and shut the door, and keep us out.

Serj. *Darnell.* You have seen him take live coals, and throw them into his father's plate?

Mrs. *Arnold.* I did.

Serj. *Darnell.* Was you not afraid he would have set the house on fire? Had he not sense enough to do that?

Mrs. *Arnold.* I believe he had done it, if he had not been prevented.

Serj. *Darnell.* You did not think him so mad, as that it was necessary to confine him.

Mrs. *Arnold.* I did, in my conscience, think so.

Serj. *Darnell.* And you did not confine him?

Mrs. *Arnold.* It was not in my power.

Mr. *Marsh.* How long have you lived at Guildford?

Mrs. *Arnold.* Three years at Guildford.

Mr. *Marsh.* You can't but have observed him then often out of order?

Mrs. *Arnold.* Often so, by fits.

Mr. *Marsh.* One of your brothers says, he used to be worse in spring and fall. Did you ever send for any physician?

Mrs. *Arnold.* No.

Mr. *Marsh.* If he was so spring and fall, a little bleeding would have done him good.

Mrs. *Arnold.* I don't know but it might.

Mr. *Marsh.* Did you ever send to your surgeon to bleed him?—Mrs. *Arnold.* No.

Serj. *Darnell.* Was it the opinion of the family, that he should be sent abroad for a soldier?

Mrs. *Arnold.* It was the opinion of many of his friends; but that is eleven years ago.

Serj. *Darnell.* But he used to have his frantic tricks then?—Mrs. *Arnold.* Yes.

Serj. *Darnell.* Whether did you look upon it, that sending him for a soldier would reclaim him, or cure him of his madness?

Mrs. *Arnold.* Some were of opinion it would.

Serj. *Darnell.* What! cure a madman?

Mr. *Marsh.* Pray, how long hath your father been dead?

Mrs. *Arnold.* Five years, last October.

Mr. *Marsh.* How long before his death was this flinging the coals on his plate?

Mrs. *Arnold.* I don't know, but I believe it's more than seven years ago.

Mr. *Marsh.* Do you know any thing that should give him this turn of mind?

Mrs. *Arnold.* No.

Mr. *Marsh.* Whilst you have lived at Guildford, hath it not been known and heard, that he went a sporting with a gun?

Mrs. *Arnold.* Yes, frequently.

Mr. *Marsh.* Did you ever caution any body against letting him have a gun or ammunition?

Mrs. *Arnold.* No, I never did.

Mr. *Marsh.* Was he under any body's inspection, or care?—Mrs. *Arnold.* No.

Serj. *Whitaker.* Did he not kill rabbits, and sell them?—Mrs. *Arnold.* I don't know.

Serj. *Whitaker.* Hath he not taken fish, and sold them?—Mrs. *Arnold.* I don't know.

Serj. *Whitaker.* Did you ever apprehend any danger from his using his gun?

Mrs. *Arnold.* Sometimes we have.

Serj. *Whitaker.* How comes it you have not taken it from him?

Elizabeth Arnold sworn.

Mrs. *Arnold.* My lord, I have lived with him some years, and for more than seven years I have observed him to be mad at sometimes, though not so mad then as he hath been since: he was so very mad sometimes, that I was very apprehensive of being mischiefed by him; he would have pistols and guns, but I have taken them all away from him. Sometimes he would let off his gun in the kitchen and give no warning: a great many times he would sit and talk to himself, and swear: Sometimes he would talk to inhuman creatures in a different manner from what I have heard any body in their senses do. About a month before my lord Onslow was shot, I observed, as I could by his eyes tell when his fit was coming, I observed him to look more wild than ever I see him in my life before. The 20th of last August, he came into the parish church of St. Nicholas, stood in the front of the congregation, with his face over his breast, and his hair in such a dismal manner, that I see several look at him; and they told me, when I came out of the church, that my brother looked so frightful, that they would not meet him for ever so much. On the 28th of August last we met Mr. Justice Allen, and we asked him, if he did not think him distracted; he said, He is a great deal so, and he appears to be an enemy to all mankind; that he would give him no account why he did this action, but desired him several times to shoot him through the brains. As to myself, the relation my sister, Mary Arnold, hath given of it, is true, he had no provocation from me; so far from that I was afraid of him, and I said, Don't throw the stick at me: but as soon as my back was turned, he took up the stick, and threw it at me, and afterwards laughed at it.

Mr. *Marsh.* Where did he live, when you was afraid of the danger of his pistols and guns?

Mrs. *Arnold.* Sir, he lived in my father's house at Katherine-hill, where I lived.

Mr. *Marsh.* Then, I find, when you was in the family, it seems you were afraid of his guns and pistols; how long have you lived at Guildford?

Mrs. *Arnold.* More than three years. I have left off house-keeping five years.

Mr. *Marsh.* Have you not known him have his gun at his command, and that he used to go frequently a shooting?

Mrs. *Arnold.* I did not know it of myself, but I believe he did: He had no gun of his own, but he used to borrow one: When I left off house-keeping, I sold my gun, and would not let him have it.

Mr. *Marsh.* Why should you take so much care when you lived together in the family, and take no care afterward?

Mrs. *Arnold.* I can give no account of that; but my father hath been advised several times to put him into a mad-house by Mr. Woodward, the minister of the parish; and Mr. Woodward advised my father, in my hearing, to put him into a mad-house; for he said he was mad, and nothing else would do him good.

Mr. *Marsh.* Do you know this Mr. Smith?

Mrs. *Arnold.* No; I don't know that ever I saw him in my life before: I do not know him. When I first heard of this horrid action, every body said he was mad.

Eleanor Giltings sworn.

My lord, I have believed him to be a lunatic ever since I knew him, which is almost nine years: I was at his father's house with a son of my master's; I see him do a great many wild actions; I have heard him swear and curse, fling things about the house, without any

provocation: I have been often surprized at it; but hearing he had never done no harm, I was passive with it. My mistress hath been at Katherine-hill for four years last past, six, eight months at a time.

Just. *Tracy.* What, at that house?

Gittings. At that house, my lord; and hath come in at the back-door, and sat in the kitchen; and several times I have found him talking to himself; I have come in and spoke to him, and he hath made no answer. Last March I went down: My master's son was sick, and I sent for him to go a fishing, to get a little fish. A day or two after he came in at the back-door into the kitchen, he sat himself down; I desired he would go a fishing, and get some fish for the child: He sat in a confused order; and at last he told me the child was well enough. I set victuals before him, but he did not incline to eat or drink, but he was in a great hurry and confusion, more than I have seen him before: I was amazed at it, and I asked him the reason; he told me my lord Onslow disturbed him day and night; and also he had sent imps and devils into his room, and he had no sleep, and he was with him wherever he went. I have seen him since this, and I always found him in great disorder, always complaining of my lord Onslow's bewitching him, and he had sent into his chamber devils and imps, and he had no rest, and he could not go a fishing, for my lord Onslow was with him. I inquired at that time whether he had been fishing in my lord Onslow's ponds, or had offended his lordship with any thing he had said? No; he knew nothing, but that he was with him perpetually. About May he hurt his arm, by jumping over a little river; and, as I was told, he went to Mr. Thomas Howard.

Just. *Tracy.* That is nothing what you was told.

Gittings. My lord, I only bring this as a circumstance. He went there, and Mr. Thomas Howard applied a plaister, and rolled it up. The next morning he sent his man to know how he did: The man called at a neighbour's house; it seems he did not care to go by himself; and when he came into his room, there he found the plaister and roll thrown about the room.

Just. *Tracy.* Did you see this?

Gittings. When I heard of it, I went to him, and enquired why he served Mr. Howard's man so, and would not let him do up his arm? Says he, Mr. Howard and his man are rogues; they only wanted to make issues in his arm, and his arm was well enough, and they should do nothing to it. This I heard him say. Some little time after that, I understood that Mr. Waite's rooks had offended him, by the noise they made in the night, that he could not sleep for them. I have heard abundance of stories that I must not repeat here; so will only tell you some. He came one day into the kitchen, and sitting in a disconsolate manner, I asked him how he did? He told me he was bewitched and disturbed, and Mr. Waite's rooks made such a noise that he could not sleep, nor be at peace day nor night: I told him he had used Mr. Waite ill: He said he had no more business to keep rooks than he; and Mr. Waite is a rogue, and nobody loves him; and he knew his wife did not love him. This he told me, and said they had disturbed him all night and day; and was then upon the story of my lord Onslow again; I thought he had got out of one into another.

Just. *Tracy.* When was this?

Gittings. After May, between May and June, in the middle of June, I believe. After this was over, that the rooks were done with, and got out of his head, then he begins with my lord Onslow a-fresh; then I often heard that he complained of my lord Onslow's plaguing him day and night.

Serj. *Cheshire.* Don't tell what you have heard from other folks.

Serj. *Whitaker.* Did not you live with Mr. Edward Arnold?

Gittings. I live now with Mr. Nathaniel Arnold.

Serj. *Whitaker.* Did you ever hear the prisoner threaten my lord Onslow, or his life?

Gittings. Never his life, nor nothing like it.

Serj. *Whitaker.* Did you never tell one of these brothers that you have heard him thus threaten my lord Onslow?

Gittings. No, I never did hear him threaten my lord Onslow.

Serj. *Whitaker.* Did you tell any thing of the prisoner?

Gittings. Yes: I told my master's brother that I was in a great fright about the prisoner; that I believed him much worse than ever I see him; and much feared he would do himself a mischief.

Serj. *Whitaker.* What answer did he make?

Gittings. My master's brother seemed surprized.

Serj. *Whitaker.* Did not he say, Mind your own business, you have nothing to do with it; or to that purpose?

Gittings. No; I know nothing of it that he said so. I have a great deal more to say, my lord. My mistress and I coming from church one day, some time before he shot my lord Onslow, and coming from church, a shower of rain drove my mistress into the house of his landlady; I was with her: the landlady came, and my mistress asked where the prisoner was? She said he was within: my mistress told her that she was very angry with him, and did not desire to see him; she was very angry that he should go away with Mr. Fawke's horse. His landlady told my mistress, He is certainly mad, and it was not to be minded what he said or did.

Serj. *Cheshire.* What you have heard goes for nothing.

Gittings. I was to see the prisoner in the gaol in Southwark the 23rd of last month, being the first time I ever saw him since he shot my lord Onslow: I found him in great disorder then, and I asked him how he came to do such

a wicked thing? He gave me no answer, or none that I could make any thing of. I asked him if any body had set him to do it? and he told me it was one Swetman and Thomas Farmer; which I knew to be two little boys: I wondered at his answer. I asked him how he did, and told him the time drew near for his trial: he took no notice of that; he said there was a great plague in the world; and also that he knew not how it came; but repeated it, God take his soul, if he knew how the plague came, or any thing about it: but abundance of times these words were repeated.

Serj. *Cheshire.* What words?

Gittings. God take his soul, if he knew how the plague in the world came. I enquired what he meant by it? He told me the wickedness of wicked people had occasioned it, and there would be great mourning in all the world. I enquired what he thought would become of him if he was to be tried and condemned? He told me he should have a fortnight's time to go where he would, and do what he would: then every body would be easy, and all would be at peace. This was on Saturday last; and he repeated the words, God take his soul, if he knew any thing of the plague in the world, or any thing about it.

Mary Martin sworn.

Mr. Edward Arnold was in my house, which people said was mad: Ned Arnold, mad Ned Arnold. People would give him that report; or crazy Ned Arnold. Ned Arnold was in my house, and accordingly called for a mug of beer. And please you, I keep a public house. When I had fetched him a mug of beer, he sat himself down by the fire; he fell a swearing and cursing, and swore that my lord Onslow was in his belly. Says I, Ned, what makes you swear, and curse my lord Onslow so? it is pity, Ned, but my lord should know it; if he knew he was in your belly, he would quickly come out of it. Says I, If you will have, Ned, a chariot, you and I will go to him. Then we concluded what time to go, which was about eight or nine o'clock the next morning, to go to my lord Onslow's, and tell him he was in his belly. Accordingly he got out of his chair, and took a knife, and swore he would carry that with him. I tell you nothing but what is true. So then comes in Harry ———, Mr. Flutter's man that belongs to the horses. He comes in with a whip in his hand. I said, Harry, will you go and assist Ned and I to my lord Onslow's, and tell my lord that he is in Ned's belly? Then several came in, several carriers to drink at my house: and this same man fell a laughing heartily. I said, Harry, will you go? Yes, says he. But, says I, Ned Arnold talks of carrying a knife. No, says he, if you carry a knife, we may carry you there, but my lord will take care of us, and send us to the house of correction. Ay, says I, and hang you too. He had been in my house twice before, I will leave nothing that I can remember, ...

Sol. for the Prisoner. I desire she may be asked, whether he did not open his bosom, and bid her feel for my lord Onslow?

Martin. Some time before he came to our house, and sat scratching his bosom, and feeling and looking down into his bosom, cursing and swearing, and he said my lord Onslow was in his bosom, and he had such an influence over him, that he could neither eat, nor drink, nor sleep, or be at ease for him.

Serj. *Comyns.* You spoke of carrying a knife; did you ask him the reason why he would carry the knife?

Martin. No, I did not.

Serj. *Comyns.* Did you apprehend that he designed any mischief?

Martin. No, I had no thoughts about it; I only talked in a jokerly way. And it please you, my lord, he was there looking in his bosom. One time he comes, says he, There is Sukey Monneux, my lord Onslow is got into Sukey Monneux's belly. I did not know there was such a gentlewoman. Says he, He is such a plague to her, that she cannot eat, drink or sleep. Says my daughter, about 18 or 19, not 20 years old, Can't you s—t? Because he had said he could not eat or drink. If I s—t, says he, it won't stink like another man's t—d. My lord, it is true. I think I have nothing more to say.

Swetman sworn.

I took him to be a crazy sort of a fellow, not to be in his senses at all times. He would say he was plagued with the bugs and bollies, that he could not rest a night; he was fain to stop his ears with the rug, or he could not sleep. In the morning sometimes he hath asked me whether I could rest? I told him, very well. I asked him, how he rested? Says he, I am plagued with the bugs and bollies. He lodged at my house 15 months.

Just. *Tracy.* How long ago is it since he lodged at your house?

Swetman. He lived there till this accident happened.

Serj. *Whitaker.* Did not you lend him a gun?

Swetman. Not at that time: I did use to lend him a gun in the winter, to shoot sparrows, &c. but I did not lend it him at this time that this happened.

Serj. *Whitaker.* Why did not you take the gun away from him? This very gun that he shot my lord Onslow with, did not you lend him?

Swetman. I did not lend it him at that time: I did say he might have the gun to go out.

Serj. *Whitaker.* You gave him leave to have this gun; then I ask you, would you lend a madman your gun?

Swetman. I take him to be worse sometimes than other, as in spring and fall.

Serj. *Whitaker.* Did you take him to be sensible at this time?

Swetman. He is more sensible in the winter.

Sol. for the Prisoner. My lord, I desire he

may be asked, whether he did not hear him say any thing of my lord Onslow; that my lord Onslow had been there with his wife? Or what he heard passed between this man's wife and my lord Onslow?

Swetman. He said, My lord Onslow had brought a hamper of wine into the kitchen, and sat it on the dresser over night, and when he rose in the morning, the wine was drank out of the hamper, and the empty bottles were upon the dresser. When I have come home, it is true, says he, my lord hath been friggetting here, and my lord keeps company with your wife, and your house is disturbed, they keep dancing above stairs, that I cannot rest. I have opened the kitchen door, to show him that it was not so; that there was no hamper nor bottles there.

Serj. *Whitaker.* Pray, give an account when he had your gun at first.

Swetman. Sir, I can't do it.

Serj. *Whitaker.* I ask you, where your gun was at that time?

Swetman. It was at my house.

Serj. *Whitaker.* What gun had he when he shot my lord Onslow?

Swetman. It hath been reported that it was my gun.

Serj. *Whitaker.* How came he by that gun?

Swetman. I will tell you how he might come to have the gun: I was at Mr. Waite's, hooing of turnips, before this happened; says Mr. Waite, Can you catch my conies? Says I, I believe some can do it better than I: Says he, I will give sixpence a coney to any body for catching of them. When I came home, I happened to drop a word about it; my boy was by; says he, Ned, shall you and I go and catch conies? Says he, I have never a gun: says he, You may take my father's gun; and, says the boy, We will go halves.

Serj. *Whitaker.* Then you left the gun, as he might take it?

Swetman. I did not lock it up.

Serj. *Whitaker.* How came you to let a gun be so in the way, as he might come at it, if you apprehended him to be a madman?

Swetman. In former times he did carry a gun, and he came of a good family: I thought I might let him have a gun, when I see him in his senses.

Serj. *Comyns.* You say this discourse about giving sixpence to kill conies, gave occasion that he had your gun?—*Swetman.* Yes, Sir.

Serj. *Comyns.* Did he hear you speak it, that such a one would give sixpence, &c.

Swetman. Not to my knowledge; but my boy took it up, and told him the next day.

Serj. *Cheshire.* Pray, this story you tell us about a hamper of wine, when was it?

Swetman. A pretty while before this happened.

Serj. *Cheshire.* What do you call a pretty while?

Swetman. I believe it might be half a year.

Serj. *Cheshire.* Did not he use to have the key of your house to go in and out as he pleased?

Swetman. We had two keys; he had a key, but we could bolt the door, and keep him out of the kitchen: I was afraid he would fire the house.

Serj. *Cheshire.* He might come in and out when he would?

Swetman. We did not trust him with that liberty to go into the kitchen.

Serj. *Darnell.* Did you trust a man in your house, that you was afraid would fire it?

Swetman. He could not come to that place where the fire was.

Serj. *Darnell.* You was often frightened lest such a thing should happen?

Swetman. I was going to turn him out: I told my wife, This fellow is so mad, that we can't keep him any longer; he is fit to go to Bedlam.

Serj. *Comyns.* Did you hear him speak of my lord Onslow?

Swetman. He hath been railing some time. When my boy was alone with him, he asked my boy for my hog-knife; the boy asked him, what he would do with it? And he said, He would kill himself.

Serj. *Comyns.* Did you hear this?

Swetman. I did not hear him say it, but my boy told me when I came home.

Serj. *Comyns.* Did you ever hear him speak by way of threateningg my lord Onslow?

Swetman. Sometimes he would halloo as an owl doth; sometimes he would say Cuckoo.

Serj. *Comyns.* Have you ever heard him threaten my lord Onslow?

Swetman. I have heard him curse and damn my lord Onslow.

Serj. *Comyns.* Have you never heard him threaten him?

Swetman. One time, about a twelvemonth ago, he said he would shoot my lord Onslow at the horse-race, and looked very wild.

Mr. *Marsh.* What horse-race? Guildford horse-race?—*Swetman.* I took it to be so.

Mr. *Marsh.* Did he say he would shoot him at the next horse-race? Or he would have shot him at the former horse-race?

Swetman. I took no further notice of it; for I took him to be a crazy fellow.

Mr. *Marsh.* But what did he say?

Swetman. He said he would shoot my lord Onslow at the horse-race.

Mr. *Marsh.* When was this? Before the horse-race?

Swetman. It was in May was twelvemonth: there was one horse-race passed: I never heard he did motion it.

Mr. *Marsh.* You say this was May was twelvemonth: how often hath he had the use of your gun since?

Swetman. I don't know how often, because I did not mind: he never did no harm.

Mr. *Marsh.* Hath he had it several times?

Swetman. He hath had it several times.

Serj. *Whitaker.* Had he not the gun whenever he would?

Swetman. No; I used to carry it to Woodbridge, to shoot sparrows.

Mr. *Marsh.* Did not you bring the gun home again?—*Swetman.* Yes.

Sol. for the Prisoner. My lord, as to the time of his taking the gun, to go to shoot Mr. Waite's conies, whether it was not the same morning that my lord Onslow was shot?

Just. *Tracy.* He tells you he was not at home.

Solicitor. According to his information, whether it was not at that time?

Just. *Tracy.* He said he did not lend him his gun then, but he had it then.

Soliciter. Whether the lane, in which this fact was committed doth not lead to Mr. Waite's turnip-field, where the conies were?

Swetman. It lays the same way, and my wife thought he went, because my wife see him, and had lent him money to buy the shot to shoot the conies with.

John Dedman sworn.

Just. *Tracy.* What do you know of this man?

Dedman. I know him to be a madman.

Just. *Tracy.* Why?

Dedman. By reason my lord Onslow was always in his mind; he was always troubled with my lord Onslow; he could never take no rest, the devils and bugs troubled him so. In the next place, he rented a house, he had neither goods, nor beds, nor chairs, either to sit or lie down upon; he had nothing to lie down upon. He would come to the house, and he would beat them all out of the house: I have been called from my work, to make peace among them.

Just. *Tracy.* What house? To whom was this?

Dedman. To his friends, to his sisters.

Just. *Tracy.* How long ago is this?

Dedman. About five or six years ago.

Richard Wheatly sworn.

Wheatly. I have shaved him these two years, and he hath come into the shop sometimes so that I have been afraid to shave him: sometimes he would come in, and go out again, and hath spoken never a word.

Just. *Tracy.* Why have you been afraid?

Wheatly. Because he hath swore all the time I have been shaving him.

Sol. for the Prisoner. My lord, I desire he may be asked, Whether he did not use to desire him to cut his throat?

Wheatly. One time, as I was shaving of him, he said, Dammee, cut my throat.

Serj. *Cheshire.* I suppose, at that time, you had given him a nick; I ask you, whether he said, Cut my throat? Or, You will cut my throat?

Wheatly. He said, Damn you, cut my throat.

Serj. *Whitaker.* What answer did you make?—*Wheatly.* None: I was afraid.

Serj. *Whitaker.* Did you take every man for a madman, that swore when you cut him?

Tydie sworn.

Tydie. I have known Edward Arnold for several years; and I never knew but that he was a crazy sort of a man.

Serj. *Whitaker.* What do you mean by a crazy man?

Tydie. He had several foolish expressions.

Serj. *Whitaker.* Did you take him to be a distracted man?

Tydie. Sir, I could not take him to be otherwise.

Sol. for the Prisoner. My lord, I desire he may be asked, Whether he heard him express himself about the bugs, and bollies? Or, Whether he proposed to take his gun, and shoot himself?

Just. *Tracy.* Did you hear him talk about the bollies?

Tydie. I heard him say, that the bolleroys, and the plagues plagued him so, that he could not take his rest at night.

Solicitor. Whether he desired that he might take his gun, and shoot himself?

Tydie. I have seen him several times.

Just. *Tracy.* Did he say he would take his gun, and shoot himself?

Tydie. I can't say that; I don't know it, I never heard it: I have heard him sit, and rail, and swear, and damn to himself.

Solicitor. I desire he may be asked, If he hath ever heard him say any thing about any transaction between my lord Onslow and this Swetman's wife?

Tydie. I have heard him say, that my lord Onslow was one night there, at Swetman's house, and he drank out a hamper of wine there; and they had fiddles, and danced; and he said, one Sentiman played to them: and when he came down in the morning, there was the empty bottles upon the table.

Thomas Poulter sworn.

Poulter. I ever took the man to be not as another man; he was always out of his mind.

Serj. *Whitaker.* How long have you known him?

Poulter. Sir, I have known him these nine years. One time he came in in a passion where I was, and said he would kill me.

Serj. *Whitaker.* What was the reason?

Poulter. I know none at all; but it passed over, and he never did me any harm, or any wrong. About a fortnight before this was done, I was working in the field, and he came to me, and looked mighty melancholy; he swore and cursed, and he said at last, Damn Tom Onslow; and I asked, how my lord Onslow had hurt him? He said, he had bewitched him four or five years ago, and he had had nothing gone through him never since, and he should never be able to go up May hill. This was about a fortnight before this accident happened.

Serj. *Whitaker.* Where do you live?

Poulter. At Godalming.

Serj. *Whitaker.* Did you give any of his relations notice of this?

Poulter. A great many people knew of this: he said, he wished he could see him to scratch

him to fetch blood of him, because he had bewitched him, and he would go to the king, and know the reason, why my lord Onslow plagued him so.

Mary Morris sworn.

Morris. My lord, I have known him almost these five years; I always thought him mad, by his mad actions, as I have seen him in; he hath often come in at his sister's house, and hath sat himself down, and hath talked to himself; and hath swore, and cursed, and talked of the plague, and would look one way and t'other, and talked to himself: he would sit so an hour together, and then he hath got up, and gone away, when his sister hath not been at home. On the Saturday before he shot my lord Onslow, he came and asked for some small beer: my mistress was not at home; I fetched him some; he sat himself down, grinned his teeth, and had such actions; looked one way and t'other, and without any provocation cursed and swore, and talked of plagues. I was so frightened, I called my fellow-servant into the room; I was afraid to stay with him.

Just. *Tracy.* Did he shew any marks of rage?—*Morris.* Yes, my lord.

Just. *Tracy.* What did he do, besides grinning his teeth?

Morris. He did not say much: he looked about, and talked to himself.

Just. *Tracy.* How did he talk?

Morris. He talked to himself.

Just *Tracy.* How?

Morris. Oh! very wildly; with his eyes looking one way and t'other.

Serj. *Whitaker.* Was he cursing at any body in particular?

Morris. Not as I heard; I did not hear him mention any body's name.

Sol. for the Prisoner. My lord, I desire this witness may be asked, What transaction she saw in the man, and what directions she received from the keeper, in the house of correction?

Morris. I carried him victuals every day, while he was there: he said very little to me, but behaved himself much as he used to do. —The gaol-keeper, Mr. Flutter, and John Pullen told me, that my mistress should not cut him victuals with bones, nor they would not let him have a knife; they were afraid he would make away with himself; they stripped the meat off from the bones, before they gave it him: the good woman of the house where he lodged, and the boy went with me to see him; says he, Joe, how do you do? Do the plagues and bollies plague your house as they used to do when I was there? And the boy laughed at it.

Stephen Fachin sworn.

Solicitor for the Prisoner. My lord, I desire he may be asked, Whether he hath not found him laid in a lodge all night in the air?

Fachin. My lord, I found him in Loosley-lodge, and there he was when I went to work upon a place, where there is none but hard timber.

Just. *Tracy.* When did you find him there?

Fachin. I can't remember the time.

Just. *Tracy.* Was it night or day?

Fachin. It was in the morning.

Just *Tracy.* Had he been there all night?

Fachin. As far as I know, he had.

Serj. *Cheshire.* How long ago is this?

Fachin. About two years ago.

Serj. *Cheshire.* What time was it?

Fachin. It was in the morning about seven o'clock: we went to mend the tiling of the lodge; I can't tell the time of the year it was.

Serj. *Cheshire.* About what work was you about?

Fachin. Mending the tiling of the lodge: it was the spring of the year.

Serj. *Cheshire.* About Lady-day?

Fachin. It was then about.

Serj. *Cheshire.* Did you ask whether he had been there all night?

Fachin. No; I did not find him at first, but he popped his head out: when I found that, I looked up, and heard a man cry, Don't meddle with my tobacco: I was surprised at it.

Serj. *Cheshire.* Who brought you here?

Fachin. I was subpœnaed.

Serj. *Cheshire.* Who brought you?

Fachin. Mr. Arnold.

Serj. *Cheshire.* Which of them was it?

Fachin. I don't know both; Mr. Arnold, of Katherine-Hill.

Serj. *Cheshire.* Had you any promise of any money, or any thing else, if you could swear him a madman?—*Fachin.* No, my lord.

Serj. *Cheshire.* Were you not told, it should be worth thirty or forty shillings to you, if you could prove him a madman?

Fachin. I had nothing promised me.

Serj. *Cheshire.* I ask you, whether they said, it should be worth so much to you?

Fachin. No.

Serj. *Cheshire.* Did nobody say so to you?

Fachin. No.

Serj. *Whitaker.* Have you not declared that this Arnold was a rogue, and no madman?

Fachin. I believe he is a lunatic man.

Serj. *Whitaker.* I ask you, whether you have ever declared that you believed him a rogue, and no madman?

Fachin. I believe I always took him to be a madman.

Serj. *Darnell.* Did you never say to any body, that it was your opinion, that he was not mad, but a rogue?

Fachin. Sir, I never said any such thing in my days: No, indeed, I did not.

Serj. *Whitaker.* Did you not say so to one Sentiman?—*Fachin.* No.

Serj. *Whitaker.* Had you no discourse about it?—*Fachin.* No, no.

Robert Dandy sworn.

Dandy. My lord, I have known him a great many years; I lived near his father's; I never thought him any thing but a crazy

man, seldom in his senses: his father hath sent for me several times, to desire him to be civil; for he would be ready to beat his sisters and his father out of doors: I told him, if he would not be civil, I would send him for a soldier. I had him before a justice of peace, to frighten him, but he was as bad when he came home again.

Just. *Tracy.* Did you hear him threaten to turn his father and sisters out of doors?

Dandy. I did not hear him: he abused his father, and I had him before a justice of peace; I was constable.

Serj. *Cheshire.* Did you take this to be a carriage to a madman, or to a wicked man, to reclaim him?

Dandy. I did not take him to be in his senses.

Serj. *Cheshire.* Why did you carry him before a justice? Was he not a wicked rogue, an untoward boy? Was not that the reason why his father sent him for a soldier? Do you use to send madmen for soldiers?

Mary Swetman sworn.

Sol. for the Prisoner. This is the wife of —— Swetman.

Just. *Tracy.* What have you to say? What is your opinion of the prisoner?

Swetman. I really think he is a madman, and not in his right senses.

Just. *Tracy.* He lodged at your house?

Swetman. He lodged at my house,

Just. *Tracy.* When? About this time that this accident happened?

Swetman. Yes, my lord: though when he came to my house, I took him to be a pretty sensible man. After a little time, he grew very mad; and one Sunday morning he got up, and walked out with my son up the Chapple-hill, and when he was upon the hill, he said to my son, Joe, I won't come to your house.

Serj. *Cheshire.* Was you there?

Swetman. My son told me so.

Serj. *Cheshire.* That won't do.

Swetman. He said he would not come to my house any more: It rained that night, but he did come, and went to bed. The next day he went a walking, but I don't know where: At night he came home; I heard him come home: About nine, I desired him to come in, and go to bed, because my husband was not at home; he said, He come in, he would not come in, I had got rogues hid in the house; and I said, No, Mr. Arnold, or Edward or Ned, I can't tell which; he stepped over the way with such a fury, and said, He would not come in to-night; I thought he should not come in to frighten me; I locked the outward door; he had a key, so had I, and I bolted the middle door, that when he got in at the outward door, he should come no further. At two o'clock in the morning he comes to the door, and sat there 'till the clock went three, then he came in; I finding him there, got up, and opened the middle door; he went to bed, said nothing to me, or I to him, but looked out of humour, in a wild, staring, distracted way: A little while after, my husband came home, and as he sat by the fire, he came to him; Stephen, says he, you are a pains-taking man, but you have a bad woman for your wife, and he made me out as if I was naughty to my husband; says he, She hath such rackettings and such doings here; she hath had men above stairs, fed them with victuals, and I could not rest for them. He said, He came down one morning, and he saw a hamper and bottles of wine standing upon the dresser, as my lord Onslow and I had drunk out, and he had been there frigeting; and I was in a passion, and my husband said, I was to blame to take notice of him, for we took him for a madman. Sometimes I have desired him to read a chapter in the Bible, when my husband hath been abroad, to pass away the time, till my husband hath come home, which he did sensibly; I desired him to read another, he did it very sensibly. Another time as he was sitting down on the couch, by the fire-side, I see him look very wild, and I came to him, and said, Come, take the Bible, and read, and put all these abominable, wicked, distracted things out of your mind; he gave me no answer, but took the Bible out of my hand, and looked in it, and swore and railed, and said such things as I am sure could not be in the Bible, and he looked very wild and very mad.

Serj. *Cheshire.* How long was this before this accident happened?

Swetman. I can't tell how long, it was within the time he was at my house.

Solicitor for the Prisoner. Please to ask her about the rug, at her house.

Just. *Tracy.* What do you say relating to a rug?

Swetman. One morning, in a raging condition, I heard him swear, that he had pulled my rug to pieces, and had stopped his ears with it. When he came down stairs, he came raving, and pulling the stuff out of his ears, and raving at the bollies and bolleroys, and I know not what, and said, The bollies plagued him, and he thought my lord Onslow plagued him.

Solicitor for the Prisoner. My lord, I humbly beg the favour, that she may be asked, relating to the transaction that morning, when this unhappy accident happened, that she would give your lordship an account, if you please to ask her, whether he lay at home that night, and what passed between her and her son, relating to Mr. Waite's conies? And whether she did not mention, that Mr. Waite would give sixpence for every coney they catched, because they eat his turnips?

Just. *Tracy.* You would have me to ask these questions? Did he lay at home that night?

Swetman. My lord, he did not lay at home that night; I never heard nor see him till about six o'clock; he took a basket of mine, and went to Guildford, and bought a loaf; in the mean time, I got up, and he, to the best of my knowledge, asked me, Whether I had seen or heard any thing of the fox-hounds? and I

said, No, don't trouble me, I have something else to mind: That was in the morning, after he came from Guildford.

Sol. for the Prisoner. Did you hear him say any thing about Waite's conies?

Swetman. Yes; after he came home, he asked me if I had heard or seen any thing of the fox hounds; and he looked sadly wild and indifferent. He went out of doors, and came in again; sat down, and got up again, and was very untoward. My little boy came in, and asked him, Whether he would go and shoot Mr. Waite's conies? For my boy said Mr. Arnold should shoot them, and he would bring them to him; and Mr. Arnold said, he had no powder nor shot, nor money to buy any. And my child said, I will go with you, and ask my mother. So Mr. Arnold asked me to lend him a shilling; and I did lend him a shilling's worth of halfpence; and my child wanted to go with him to Guildford to buy this powder and shot: I said, he should not go, but he should go to school; and Mr. Arnold was to go to Guildford and back again.

Sol. for the Prisoner. Did he borrow it to buy powder and shot?

Swetman. He borrowed it to buy powder and shot to shoot the conies, so far as I know.

Sol. for the Prisoner. Did he give that as a reason?

Swetman. Yes; my child was to go with him; and he was overjoyed that he was to go with him to shoot the conies.

Just. *Tracy.* Then he went away, and came home again?—*Swetman.* Yes.

Just. *Tracy.* How far do you live from Guildford?

Swetman. About half a mile. After he had got powder and shot, I see the gun standing in one corner of the kitchen. At last I thought he had not a mind to go and shoot the conies. He was gone out of the door; a man and a woman came and desired me to stand at my door, there was a horse and a hamper coming by; I used to buy fish of them as they went by. I desired Mr. Arnold to stand at the door, while I went up to dress. I took it he would stand at the door while this horse and hamper went by. To the best of my knowledge, he said he would. I went up. Afterwards he came and said, Are you coming down? I said, No: but I said, If you want to go, you may go. I thought him a trusty steward. So he went away. I looked to see which way he went. He went up the lane towards Mr. Waite's turnip-field. Then I went away to dress my head. I was but just gone, but I heard the gun go off. Thinks I, this man hath shot something in the lane. When I looked, I saw some gentlemen, and some horses, and nobody upon them. Then I thought he might have frightened the horses, that they had thrown the gentlemen. Immediately one came to me, and said, Dame, bring a chair; which I did. And I saw a gentleman was shot: he was wounded and bloody. Somebody said, Have you got some good brandy, or fair water? I went and fetched both. When I came again, I did not know that this was my lord Onslow.

Serj. *Whitaker.* Had you heard him say any thing that day, or before, threatening my lord Onslow?

Swetman. Yes; I have heard him say, he would kill my lord Onslow.

Sol. for the Prisoner. And nobody else?

Swetman. He hath said he would kill me; and he hath threatened to kill Sentiman; and he hath threatened to kill my child; for you are plagued, and I am plagued, and your child is bewitched, he said.

Mr. *Marsh.* Where did this gun stand?

Swetman. It stood sometimes in one place, and sometimes in another.

Sol. for the Prisoner. I beg leave to examine a witness or two, to confirm this witness's evidence.

Eleanor Arnold called.

Just. *Tracy.* Did you hear what this witness said?

Eleanor Arnold. Yes; she related the same thing to me.

Just. *Tracy.* How long ago?

Eleanor Arnold. About a fortnight ago.

Mary Arnold. And she gave me the same account.

Mr. *Copeland* sworn.

My lord, I was with him in the Marshalsea. I asked him, what could induce him to murder my lord Onslow? He made me little answer at first; but at last he said, My lord Onslow had bewitched him; and if he had any money in his pocket, he could not spend it in any quiet; my lord Onslow troubled him, and run in his head, that he was never easy, nor never quiet. I asked him, Whether any body had put him upon this action? And he besitated pretty much at first, and afterwards he said, No; nobody had put him upon it. I went afterwards once more to him in the Marshalsea, and I asked him again, Whether any body had put him upon doing this barbarous action? And he said, that my lord Onslow (the people had said) was the occasion of all the troubles in the nation; he said, That he could not have any peace nor quiet in himself in his own mind; and he was in a great deal of confusion. I could not tell what to make of it, that I could not but judge he was besides himself, mad I thought.

Mr. *Darby* sworn.

My lord, by command of my lord Onslow, I several times called this man to examination.

Serj. *Cheshire.* My lord, I submit it to your lordship, whether this evidence ought to be permitted in this case, as to this man's behaviour subsequent to the fact; the evidence antecedent to the fact is very proper; but the subsequent it is very likely may be counterfeit.

Just. *Tracy.* It must be submitted to the

jury, as it appears to them, both before and after.

Darby. My lord, by command from my lord Onslow, I called this prisoner several times, to examine him, to see if I could find the true cause why he did this action. I have been with him by myself, with his friends and his brothers; but I could never get any tolerable answer. He said, my lord Onslow had bewitched him, and was a trouble to him.

Sol. for the Prisoner. We have—

Just. *Tracy.* You have had an indulgence, the greatest that ever was given before; but I would not stop you.

Solicitor. My lord, I humbly submit it.

Serj. *Cheshire.* Will your lordship please to favour me, by way of reply, to take notice of something?

Just. *Tracy.* You hinted something, I think by a question. You had one of the witnesses asked, Whether this man was in a disguise? Do you believe there is any thing in that? If you assure me that Mr. Hungerford tells you there is any thing in that matter, I will hear him.

Mr. *Hungerford.* I can't tell what to say; I have looked over the act of parliament; I have it in my hand.

Just. *Tracy.* I ask you, Whether you believe there is any thing in it?

Mr. *Hungerford.* I believe there is a great deal to be said for it. If this man was not in disguise, he is not within the act of parliament. As to the attempt, never certainly was any thing more barbarous to that honourable person. As to the prisoner, here hath been all the fairness human nature can expect. I must say, that as to the relations, they have had all the kindness and indulgence. And as to the matter, that is proper to be mentioned when we have gone through the evidence on both sides: I beg leave to do it very shortly.

Just. *Tracy.* Two things upon the common rule of construction: in the repetition of the words, 'or' doth not shew it to be two clauses.

Mr. *Hungerford.* Your lordship observes, that the rule of interpreting all acts of parliament is, that of the preamble, and that of the title. I believe of late years in the minutest clause in an act of parliament there is something of it hinted at in the title itself.* Your lordship will observe, the title here is, "An Act of Parliament, &c." My lord, it can't be said, there is nothing of that case provided for: if this is a case, the fact governs; that this man must be in the clause of the act of parliament, that this person did maliciously shoot at, &c. It seems the first part of the preamble then, and the being in disguise, runs through the whole: these reasons give me some hope that I shall be in the opinion of the Court.

Again, in relation to his majesty's proclamation, which notifies the same offences as are enumerated in this act; I have here this very proclamation; and it doth not notify it otherwise, than supposing being in disguise; that is a clause which governs the rest; and the proclamation is a rule for the act of parliament. The act of parliament goes no farther than the proclamation, as to several persons in disguise, &c. So in the proclamation there is this expression, Being in disguised habits, and blacks. We reason, therefore, that no other person is supposed to be criminal here. But when one puts a case upon the Act that carries the utmost absurdity along with it, as so it will be if this be allowed, if any person that wilfully or maliciously shoots at another without being in disguise, is to commit a felony within this act of parliament. Supposing the militia in their exercise, two people go out to fight with sword and pistol, they both shoot at one another; neither is hurt; yet by this act of parliament both of them are felons.

Just. *Tracy.* I don't think that. What do you think of the next clause, sending a letter without any name subscribed thereto, &c.

Mr. *Hungerford.* There is this circumstance attending this noble lord's case, that he is alive, and not killed by this fact: and may he still live, to pursue the noble purposes and views the serjeant hath mentioned. My lord, this is the only thing I have to offer on this occasion.

Just. *Tracy.* Because I knew I was to have this cause come before me, I have had a meeting of my brethren, to have their opinion in

* "It is said that now" [4 H. 7, A. D. 1488,] "first began the custom of prefixing titles to the statutes. (Lord Raymond, 77. Hardr. 324. Instances have however before this occurred.) A title is properly no part of an act of parliament; it not being read three times as every other part of a law is, and is only proposed when it is to be sent from one house of parliament to the other. As arguments are, however, frequently drawn from the title of a statute, it is to be wished that there was a little more attention to the settling of it. For example, who would expect to find a most material alteration of the statute of Distributions, in a law, the title of which is, "An Act for the revival and continuance of several acts of parliament," (1 Jas. 2, ch. 17, § 3). It becomes indeed impossible, when statutes relate to matters of a very miscellaneous nature, that the title can be co-extensive with the views of the legislature: it is, therefore, to be wished, that such acts of parliament were distinct laws, and not thrown together in that very strange confusion, which hath now obtained the name of a 'hodge-podge' act. It must be admitted, that the ancient statutes are much more faulty in this respect, than the more modern ones: some titles to acts are even ridiculous, as 19 H. 7, ch. 6, "Pewterers Walking;" I find however in the statutes of that year, printed by Pynson, these words, viz. 'in the country' are added. The purport of this act is to prevent tinkers, who have no certain place of residence, from interfering with the trade of the braziers and pewterers." Barr. Obs. 4 H. 7. p. 449.

relation to this clause in the act of parliament. Every judge was of opinion, It is an entire clause of itself, and it had no relation to the former clause of being in disguise, &c.* So that there is nothing in this objection. I was under no manner of doubt myself before, but I was willing to have my brothers' opinion.

Mr. *Baron.* It would be presumption in me to offer any thing further, if it is the opinion of all the judges.

Just. *Tracy.* It is indeed; I did intimate it to Mr. Hungerford.

Mr. *Hungerford.* I humbly thank your lordship for the indulgence you have given me, and I wave it.

Serj. *Cheshire.* My lord, I beg leave to take notice of the evidence that hath been offered, and the defence that hath been made on the behalf of the prisoner; and as the counsel have waved the objection on the indictment; and if they had known the resolution of the judges, it ought not to be renewed: but since they have waved it, and the matter is so plain, the matter now stands upon the evidence; and I think, as it stands upon the king's evidence, there can be nothing plainer, than that the defendant is guilty of this wilful and malicious shooting, as it is laid in the indictment. Gentlemen, now I may say the fact hath been proved to you in the proper way. The act, the manner of the act, and the behaviour after the act: he did behave himself like a lunatic; but I must submit it to you, whether there is any appearance in his behaviour like a distracted man, so as to have the protection of the law. Gentlemen, that he designed this act, you have evidence of his coming to the witness to have the biggest shot; he never used to call for any but that sort to kill rabbits; but now he calls for the biggest sort; he had a different use for it than he used to have. The preparation is very suitable to the design; as that time his behaviour is as usual; that he calls for the powder and shot, and pays for it, in the same proportion as he used to do: there did not appear, at that time any great disorder in his behaviour: as to the fact, they that were present could find he was sullen; he went on, he took aim as well as any body could; and his behaviour afterwards, his countenance was pale and livid, which shews guilt, and thoughts of remorse, anger, and revenge. As to the man's case, upon their evidence, they have made the point very material, what condition of understanding and sanity of mind this man had at this time. I must agree that a man, that is a madman, a lunatic at the time, he cannot in the law be said to be guilty of felony. When I have so far consented as this, that the other side should see it is all of a piece with the usage the prisoner hath met with; but I must submit it to my lord's direction, whether they have given any proof that the man was at the time, or before, a disordered, lunatic man, deprived of his senses by the visitation of God Almighty. And as to the rule of judging, it is not, that a man acts like a madman, and doth an act that a person in his right reason ought not to do: no man that kills another voluntarily, acts like a man in the use of his reason: no man that commits a sin, a wilful sin, can say that he acts with reason; he parts with his reason: but consider what the law says, that the man that commits such, an act, is moved by the instigation of the devil; which is brought in there to shew the horror of the fact. And if the man doth act as if the devil moved him, and that no man in his senses and right mind would do so, you must not interpret it, that every man that acts thus is a madman; then your lives and fortunes are all at stake, and at the mercy of a wicked man. Every wicked man acts by a malicious wilful will. Therefore, consider the evidence given is of this kind, and you cannot blame them. I don't blame them; here are five of the relations, two brothers, two sisters, and one sister-in-law; that they should come and do all they can, to save their brother from hanging: it will be a trouble to them, and a disgrace. Notwithstanding, now they swear that they have always looked upon him to be lunatic, and deprived of his senses; it is impossible to believe them to be in earnest,

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* "The statute under which prosecutions of this sort are most frequently carried on, is the stat. 9 Geo. 1, c. 22, (commonly called the Black Act), which enacts, that "if any person or persons shall wilfully and maliciously shoot at any person in any dwelling house or other place; or shall forcibly rescue any person being lawfully in custody of any officer or other person for such offence; or if any person or persons shall by gift or promise of money or other reward, procure any subject to join him or them in any such unlawful act; every person so offending, being thereof lawfully convicted, shall be adjudged guilty of felony, and suffer death without benefit of clergy." In the construction of this branch of the Act, it has been holden that the offence under consideration has no relation to the preceding part of the clause, confining the description of the offenders therein mentioned to "persons armed, &c. and having their faces blacked or being otherwise disguised." And Arnold, was convicted therein for shooting at lord Onslow, though he had not his face blacked nor was otherwise disguised at the time; and this was approved of by all the judges." East's Pleas of the Crown, chap. 8, § 6. See, too, Hawk. Pl. Cr. book 1, c. 55, § 4.

"27th of February, 1723. At a meeting of seven or eight judges, judge Tracy proposed a question on lord Onslow's case, which was a conviction against the defendant, one Arnold, for shooting at him, whether by the new Act he is required by the same to be in disguise, &c.; and all the judges held not, he said, for a new clause is begun, and it is nonsense to apply disguise and arms to writing a letter, &c." Forbes. Rep. p. 388.

and to have acted like honest persons themselves; and the like of Swetman; and, which brings I think nine or ten of their witnesses under this consideration, Is it possible that these people believed and thought what they now swear, and they tell you for the years they have known of him; and because they have looked upon him as a mad, distracted person, deprived of the use of his reason? None of them have done any thing to restrain this man, to prevent him from doing any mischief; and they tell you the reason is, they feared no ill of the man: the account they have given of him is, that he was an untoward, wicked boy; and as he grew up to be a man, he still grew more wicked; so that he rather appears to have been a wicked man, than a madman: consider, therefore, if they are to be believed. He was designed to be put apprentice in London; but he ran away: they afterwards put him to a brewer, or intended it: did they tell the persons they put him to, We would have you take him, he is mad? They would have sent him into Yorkshire; the boy would not go: so that he would not settle any where. Is that the sign of a madman? No, of a naughty, roving head; and if all your sons and servants are mad that act thus, upon my life you will cut off a great part of mankind. Consider how they used him; they have complained of him as a wicked man, and they would put him in terror; we will make you do so and so; and they did send him for a soldier. Have you heard that the man was discharged out of the king's service, because he was a madman? No, he ran away: nobody but what is satisfied but that the man had capacity, if he had had diligence, but was an idle, roving man. The provision made by the father, and constantly paid him by the son, shews him to be in his right mind: he was a spendthrift; his money would not last; he ran a score; which shews him a bad husband: but is it possible, that if the father had looked upon him as a madman, he would not have directed some care to be taken of him as such? Would this brother that pays him 20*l.* a-year, and the man remember the return of the period, as fast as it comes? Did he with-hold it, and say, You are not fitted to be trusted? Says he, I want it; therefore let me have it. Is it not proper? Why if you must have it, give me your receipt, here is your money. Would he not reply, You are not fit to be trusted; we will see your taylor, and pay him; we will see your score, and see you are not imposed on? This is proper, if a man was void of reason; but as soon as the quarter comes, he comes for his money; they pay him, and take his receipt. Therefore consider, gentlemen, whether their actions don't falsify their oath: they say, it is a great trouble to have such a brother; we have offered and endeavoured to make all the satisfaction we can: but we desire to save his life; and we cannot do it by any act but these things which we swear, and our actions will contradict.

It would not become me to run through the particular of every witness; I shall only take notice, that not one of those, whether relations, or persons acquainted, that they ever applied to any person to have some course taken with him, as a lunatic, or a madman. You know there are methods to be used in spring, and fall, and summer time: have you found that this person hath ever been let blood? Hath any thing been done towards his recovery? I don't find there hath. Consider, gentlemen, that these people that have a brother, if they would have it believed that he is thus deprived of his senses, whether they would have dealt with him as they have done?

They sent Mr. Woodward the minister to him to reclaim him, to reform him; he had been abusing his sister, beating her with a stick: the parson comes to him, admonishes him; tells them afterwards, I have said proper things to him; but he is fitter for a doctor than for me. Did they themselves believe this, and would they not have taken the hint? No.

If in case a man that hath led a vicious life, been a sullen, morose man, would curse by himself, and would live by himself, if that man would work himself to do an ill action, this man is mad, and hath been so for twelve years, though nobody can say he was so before. He looks otherwise to-day than he did yesterday; and very likely he may have been instructed by his solicitor and friends. I don't impute any thing to any body; but it is a very convenient art for a vicious person to make use of.

He was always left to himself, never confined, or any commission of lunacy taken out. The law is now for any justice of peace to have power to confine such a person: it is dangerous for all men; it would be to have the lives of all persons in their power.

It is very remarkable, that this man had the use of a gun, most of them speak for a great many years last past; he had it in his father's time: it seems he was a good marksman; he used to shoot rabbits. The witness said he bought three pounds of shot at a time: he had no gun of his own; the man had the use of the gun but at the time when the man himself took it with him when he was gone a malting. Don't you think these were wise people to let him do so, if they thought him a madman; they would not have trusted these arms for him to have access to, when they were told that morning the man was gone to buy powder and ball, if they looked upon him as a frantic man; sure they ought to remove those instruments of mischief out of his way, so that it should not have been in his power to do what he did do. The fact is a question you will take into consideration.

My lord, we shall shew first this man's examination, notwithstanding he was afterwards sullen; and as he expresses it, What doth my lord send his fools after me?

What is put down in writing is what we shall lay before your lordship, subscribed by

his own name: notwithstanding they would have it that he is entirely deprived of reason, your lordship will find some letters writ by himself, taking notice of the difficulties he was under, that the people took his clothes from him; it was easier for him to die, rather than live in such unhappy circumstances; and desires to be brought to his trial: this was during his confinement, and is very proper for your consideration; and for these people to come to swear he is a madman, and the man to look so too, is very surprizing. We will lay this matter before you, together with a witness or two, and shall submit the whole to your lordship's direction.

Serj. *Whitaker.* My lord, I beg one word by way of reply. They have given some account of his behaviour since his confinement. Gentlemen, I cannot but take notice of his behaviour at the bar, when this man hath been spoke to, whether he hath not behaved himself as a man of sense would do that had done an injury? and when he was asked what he had to say, whether he did not give a rational and sensible answer? As I take it, he said he was sorry for the ill act he had done.

What can the most rational man, if he hath been in an ill act, say, after he hath done it, but he is sorry for it? I believe every man that has done an ill act, and is sorry for it, is a rational man.

Then, my lord, they give an account how he behaved himself after this fact; and there hath nothing been proved of any remorse, but a sullen behaviour. When Mr. Allen was with him, his behaviour was sullen; that agrees with all accounts that have been given. Then we shall call one witness, who will give you an account of his behaviour in the Marshalsea; which is introductory to two or three papers, which we shall give in evidence; What need my lord to send his fools after me, &c.? For a man to do this, and then to say he is out of his senses!

As to what Mr. Darby says, that the man was always sullen when he came to talk with him; if this be a proof of his insanity, it is rather a proof that he understood himself very well, and had his senses: there is no reason to say that this man was a madman, and the law will excuse him from being a criminal. This is all I shall trouble your lordship with: we will call our witnesses, and then submit it to your lordship's direction.

Serj. *Comyns.* If your lordship please to indulge me a very short word relating to the construction of this act of parliament; there is no foundation of any doubt on the construction of this act, and the intent and design of it.

Just. *Tracy.* Another thing more material; it was adjudged so in the King's-bench, and so entirely given up, that there was not the least doubt.

Serj. *Comyns.* My lord, therefore the thing to be considered in the evidence is, whether it is a proof of any offence within the words of this act of parliament? If this unhappy attempt had went so far as the noble lord had died, I believe it is hardly to be imagined that any evidence given here would have been thought sufficient ground to have excused the person guilty from the punishment of the law.

Then in case (as now) he recovers of those wounds, that creates a sort of tenderness and compassion, where the consequence is not altogether so direful; and that may suppose the person to be regarded with more tenderness than in another case: but the case is the same in one as in the other case; and therefore he that doth the act wilfully and maliciously, &c. is guilty within this act of parliament. If a person have no mind, he can be capable of no malicious design: therefore we humbly submit that must be the evidence to excuse the person, that he had no malice or design in the attempt made on this noble lord: but if upon the evidence it appears, that he acted with design, with deliberation, with sedulity, and a long, fixed, designed malice, and there is no evidence of insanity that can shew he had no malice to excuse him; then he is guilty within this act.

Serj. *Darnell.* My lord, I am very unwilling to take up any more of your lordship's time: I apprehend, the insanity of the man must be reckoned at the time he doth the fact; if he hath intervals, and kills a man in those intervals, he is as much subject to the law as any other man; therefore taking it all to be true, that the man is sometimes out of his senses, it will then fall under this consideration, whether at the time that he did this fact, it was not in his intervals? And if so, he must suffer the law. My lord, the evidence hath made it manifest, that he was in a capacity of acting that morning, employed to buy shot, employed to do a work to get money; he doth buy shot, distinguishes the sort of shot, a bigger sort than ordinary. In the morning of that day, the people thought him capable to be entrusted with money, and to be employed, &c. sure the people that thus employed and entrusted him, looked upon him that day to be in his right understanding: taking that singly, if at that time he was really in his senses, he is subject to the law. My lord, it is very odd to hear so many relations come into court, and confess themselves guilty of the wickedest practice; they say, they apprehended he would set the house on fire, do mischief, and yet suffered him to go abroad. Some say, they did not fear him, but they looked upon him as a madman; therefore not to secure him, it is matter of censure to all those relations, to look upon him to be mad, and yet take no care to confine him, or to cure him. I don't find one single instance to assist him with any care for a cure; therefore we hope, on the representation of the relations, this man is not such a person as to be excused from the law. I think it is very much to be weighed in the breast of the jury, whether this man is not a warning to every wicked person, and a caution to relations, that they should have regard to such a person. It is a very sorry account to be given, when a near

relation is under these circumstances, to say, It is our relation hath done it, pray don't convict him, though we have let him go abroad in the world, though we knew he was out of his senses: this strikes deep in their own conduct, whatever be the event of this trial. But I think there is sufficient proof, that this man should be brought in in the same manner as every body else is, that is in his senses.

Mr. Marsh. This trial hath held too long for me to add any thing to take up more of your lordship's time; I only beg leave to take notice, that I think it is very extraordinary in these relations, that they should not take care, when they apprehended him to be mad, to secure him: I don't apprehend that he was at a distance from any of them; but as to two of the sisters, that lived in the town where this man every day came, in the neighbourhood of Guildford, they say, they lived there three years, and give several instances of his insanity: it don't appear they ever sent any person to him to let him blood, or to give him any advice or physic; that doth not only make them blame-worthy, but, I apprehend, makes the evidence they have given of his insanity incredible, as coming from them, because it is hardly credible he should be so, and they not take that care of him as they ought. They own that they knew he used to go out a-shooting, and had desperate weapons; they never sent any body that went after him. Some of the witnesses go to represent him as incapable of any sensible action, for a great many years, and therefore he is set at the bar in a figure different from the rest of mankind: but even here, when they talk of the posture of his carrying his gun, he says upon that, he hath often had his gun go off in his hand, but never had the accident before. This man they are setting to the jury as a man of pity, of compassion, capable of compassion. Another time he said, his shot was rabbit shot. The behaviour of him, notwithstanding he is set, and put in that form, will not have that influence upon, but that if you are satisfied he hath done the fact, you will find him guilty.

Serj. *Cheshire.* I beg your lordship's leave to call a witness or two: there is one remarkable passage your lordship will hear from the witness: this was designed as a recognition of this fact, with respect to my lord Onslow, when it was finished, they had thrown the ink upon it, instead of the sand; says he, It is an ugly accident, it must be writ over again, you had better stay till it be writ over again. I only offered it as a paper signed with these circumstances, to shew his behaviour.

Barwell Smith sworn.

Serj. *Cheshire.* Did you see him sign that paper?—*Smith.* Yes, I see him sign it.

Serj. *Cheshire.* Who writ it?

Smith. I writ it.

Serj. *Cheshire.* I'll ask you, did he dictate to you, as you writ it?

Smith. I took it from his mouth, as nearly as I could.

Serj. *Cheshire.* What is the import of it?

Smith. It is a state of the case of what he had done to my lord Onslow, and how he came to do it.

Serj. *Cheshire.* You took it fairly from his mouth?

Smith. I did; it was read to him twice, and he read it afterwards.

Serj. *Cheshire.* Did he sign it?

Smith. Yes.

Serj. *Cheshire.* You observe some ink fallen upon it?

Smith. After he had signed it, I went to put some sand upon it, and in mistake, I took up the ink, and turned it up instead of the sand.

Serj. *Cheshire.* What did he say?

Smith. As soon as I had done it, he said, Why, you have blotted it so that it cannot be read, it must be writ over again: No, says I, I believe not, if you think it will signify; he then said, Pray do all you can in your power, use your endeavour with my lord Onslow, to have his fetters taken off, for they were very grievous to him. There was one of the keepers in the room, and I desired him to take notice, it was his own voluntary deed.

Serj *Cheshire.* Look upon those papers.

Smith. He writ that letter, and I gave it to my lord Onslow: I sat by him, and see him write.

Serj. *Cheshire.* Look upon that other letter.

Smith. I did not see him write this.

Serj. *Cheshire.* You take it to be his hand-writing?

Smith. Yes, I take it to be his hand-writing.

(The blotted Paper read.)

Clerk reads. "Edward Arnold, now in the Marshalsea," &c.

Just. *Tracy.* Did he put his name to it himself?

Smith. Yes, he did, he desired he might: it was read over to him, and he said, I must sign it; Yes, if you will, but do not sign it, if there is any thing in it that is not right.

The Letter produced, dated January 25, 1723.

Smith. This I see him write; he writ it himself, without my saying one word to him.

Clerk reads.——"To the reverend the lord Onslow," &c.

Clerk reads the other Letter. "My prayer to your honour is, that you would send or write word, which way," &c.

Mr. *Coe* sworn.

Serj. *Cheshire.* Sir, will you give my lord and the jury an account, whether you was with him while he was a prisoner at any time during his confinement? And what passed between you? What discourse? and how you apprehended him to be by his behaviour? Whether he had the use of his understanding, for a man under such a load of guilt?

Coe. I went, the day he committed the fact, to see him, at the house of correction: I had been up to see my lord Onslow, and then I went to see him.

Just. *Tracy.* What time was it?

Coe. About ten or eleven o'clock: then, my lord, he sat quite double, and did not speak a word. I went the next day, and he was brought into a room; he seemed under a confusion, but not lunatic; under a horror of guilt, but no remorse; says I, What could induce you to do this fact? Says he, My lord Onslow is the plague, the occasion of all the plagues and troubles in the country: Who told you so? A hundred people say so, the very boys in the street cry out of my lord Onslow. I asked him questions several times, but it was very difficult to get things out of him; he spake low to himself, and you ask several times, before you get an answer, and when he did answer, it was always rational. He would rail at my lord Onslow, and that he was the occasion of all our plagues and troubles, and a man of evil devices. Says I, Are you not afraid to suffer death? Says he, It is better to die, than to live miserably. I went to see him the next day: I asked him, Did you intend to kill my lord Onslow? He had a dreaming way of speaking; Yes, to be sure. I said, Where did you intend to hit my lord? Says he, When I shoot at a rabbit, I always aim at his head.

Serj. *Cheshire.* Did he desire you to say any thing to my lord?

Coe. I went afterwards to see him, when he was in the Marshalsea; he was very ill; I asked for him, and the man in the bar brought him to me: I asked him if he could drink some white-wine; says he, The white-wine here is too sharp for my stomach; then I called for some sack, and he had it. I asked him how he did, and he held down his head, and said, In a bad condition. I said to his keeper, I believed he would die, he should have some care taken of him; his keeper said, It was common. The prisoner said, These irons are very heavy and troublesome, and sat down in a chair, very ill. He desired me to speak to my lord, and tell him how he was ironed, and they used him. I did speak to my lord, and afterwards came to see him again, which was on the 29th of October, my lord mayor's day: I remember the day, because I see my lord mayor, and the companies, going to Westminster by water. I told him really, It is a hard case, that a man of such a good family should suffer so, you ought to declare all that you know; it is an odd thing to hate a man *extempore;* if you know any body that set you upon this, you ought to declare who it is; but have a care you don't accuse the innocent: but he never did name any body to me, but he told me, I have signed a paper, what is in that paper is true: I pressed him to tell me the truth, but he said at last, If my lord Onslow will come here himself, let him, but let him send no more of his fools after me.

Serj. *Cheshire.* Have you any reason to believe that he wanted the use of his understanding?

Coe. No; I went to school with him; we were in the same class together: he was a strange, sullen boy, such a boy I never saw the like of him before, which made me, when I left school, that I never spoke to him since, till about two years ago; and as I was going up the hill, I see him have a perch by the tail; I asked him, what he would have for it, he asked a shilling for it; I told him, I would give him sixpence, and a pint of ale: No, says he, it is honestly worth a shilling, and a shilling I will have.

Serj. *Cheshire.* How long ago is this?

Coe. Christmas was two years.

Serj. *Cheshire.* You formed a notion of him from a school-boy, that he was a malicious, surly fellow?

Coe. I did: I really thought, such a temper as he set out with, must produce such a man as he appears to be.

Just. *Tracy.* He did behave himself last night, when he pleaded, calmly, and as much in his senses as any body.

Gentlemen of the Jury, this Edward Arnold, this unhappy person, is indicted for a great offence: the law, on which the indictment is grounded, is an act of parliament that passed the last session of parliament, and is entitled, 'An Act,' &c. which is conformable to the ancient law of this kingdom, but that law hath been discontinued; if any man did assault another, though death did not ensue, it was made felony, by the ancient law of the kingdom; but the law is since altered, and it was not so, till this act of parliament was made. This is to show you, that though it is a new law, it is just, and he that hath [So in former edition] not if the reason of law: all laws are of equal force, till repealed, have the same power, but when they are repealed they are no further to be considered. There can't be a more horrid and wicked thing intended in the design of it, than maliciously to shoot a man.

To prove this indictment, they have called a great many witnesses: the first witness they call is Mr. Flutter. This happened to be done on the 20th of August last, in the parish of St. Nicholas, near Katharine-hill, as he was coming from hunting with my lord Onslow. When they came into a narrow lane, near Katharine-hill, he saw this man coming towards them, to meet them, with his gun in his hand, and he observed his gun was cocked, and he said he looked upon him, and his countenance was changed, and he looked pale, like a man that had some great concern upon him; he observed and asked him the reason of his carrying his gun in that manner; but he made no answer, went on cursing as he went, and when he passed them, he immediately turned short, shot my lord Onslow, knocked him off his horse, and he fell from his horse upon his face. This is the description he gives of the fact. He is then asked, Whether ever the prisoner was reputed a madman, or distracted, or lunatic? For you are to understand, that that is the main point in this case, and what the prisoner

hath for his defence: and the witness says, he never heard of his being mad, or his being reputed to be mad, or out of his senses, notwithstanding he lives at Guildford, and this prisoner lives very near him. At the same time he says, that he knew very little of him; so that what he says, as to that, is not of great weight. I told the prisoner, as any witness came to be examined, if he would have them asked any questions, I would ask them for him: instead of asking the witness a question, he said, He passed that way every day, and he was sorry for what was done.

Mr. Parsons is the next witness: he says he was very near my lord Onslow when this accident happened. He gives you much the same account as the other witness did, only adds, that he presented his piece, took aim, and shot at my lord Onslow: The event of the shooting, he describes in the same manner as the other witness doth; so upon that, the man went on, and he followed him; the witness followed him, and told him, he had killed my lord Onslow, and he would be hanged for it; What, says he, I shall not be hanged to day, and he would have charged again; with what intent you are to judge of upon the circumstances of the case. The prisoner was brought back to my lord, and on sight of him, my lord said, You villain, you have killed me: The witness thought he had a design to fall on my lord Onslow again, that is uncertain; his gun was taken from him, but he apprehended something of that kind, and that he intended some further mischief against my lord Onslow. He said, When he shot, he aimed at my lord's head, but the wound was only in his shoulder: And the prisoner being asked, if he had any questions to ask this witness, said, He did not know what to say. This gentleman says, he never took the prisoner to be a madman, but a sullen, morose fellow, and he used to go a shooting, and a fishing.

Another witness is Mr. Fawks; he says, he was with my lord Onslow, and saw the prisoner coming up, and he told Mr. Parsons, that he believed he had some design against him; for, not long before, he had taken away his horse, in the manner he describes. It is not material to run through all the particulars, and he did not know, but he had a design upon him; he looked very stern, and after he had passed my lord, he immediately turned round, and shot, as you have heard. He was asked, how he could see at that distance, when he was behind my lord, in the same track? so that my lord must be between him and the prisoner. He said, my lord and he were in the horse-track, and the prisoner was in the foot way, which was a different track. This witness is asked, Whether he took him for a madman, or a lunatic? Gentlemen, he says likewise the same as the other witness, that he always was a surly, a morose fellow, and did not care to talk, but he did not take him to be a madman: The prisoner then said, He had often had his gun go off in his hand, but never had such an accident before. When this witness asked the prisoner, Why he did not shoot him, because he had talked to him about running away with his horse, rather than my lord Onslow? he said, You are an innocent man.

The next witness is one Mrs. Smith: she says, he came to her shop that morning as my lord Onslow was shot, to buy some powder and shot; and when her daughter came and asked him what size shot he would have, he said, The biggest they had; but the daughter came and told her they had none of that in the drawer: then she bid her give the second size, No. 2, which she did, and he paid her for it. This witness tells you, he had been a very good customer; and that the shot he usually had was another sort; and he never asked for, or had, this big sort before. That shews, gentlemen, and from whence they would infer, and it is fit for you to consider, whether he had not some more than ordinary design, greater than what was usual when he went to kill rabbits; which is a thing much relied upon in the course of this trial. When he is asked if he will ask this witness any question? He says he hath several times bought shot of her; and she is asked whether she took him for a madman? She says she always took him to be as sensible, by his dealings with her upon the account of what he bought, as any body; and that he never had any of the biggest shot before: She tells you he paid for it as he used to do. And this prisoner on this occasion owns, that he had often bought of her powder and shot frequently.

The next witness is William Smith: He says he met the prisoner, and the prisoner asked him if my lord Onslow went a fox-hunting. This witness was asked whether he looked upon him to be distracted? He said, No, he never did. Sometimes he went out a fishing with him; sometimes he would talk very well, and sometimes not give him a word; that he was a morose sullen man: He says he was a great fisher, but his tackle was strong, a coarse gaming sort of tackle; he was no great artist at it; and that he often shot rabbits.

The next witness is John Sturt: he says he saw the prisoner the same day, and he asked him if my lord Onslow's hounds were out a hunting? He told him he did not know; he fell a cursing and a damning my lord Onslow, and said, If he saw him he would shoot him. This was about two stones throw from the place where this accident happened. He said he hath several times seen him a shooting with a gun, very often. He was asked whether he took him to be a madman? He said he never talked much sense, and he would often rail, and curse, and swear to himself: Then the prisoner said himself he never swore; the prisoner observed it upon that occasion, that he never swore; and the witness says that he took him that morning to be in drink; and when he was asked, Whether he took him to be distracted? He said, he did not take him to

he sober, he was not right in his senses, he would talk and swear so much to himself.

The next witness is John White: he says he saw the prisoner that day; he says he heard his gun go off, and he came afterwards into a public house where he was, and the witness asked the prisoner if he had shot a rabbit? He told him he had shot nothing, it was only to discharge his gun: from whence they make an observation for the king, Why should he discharge his gun, unless it was that he might be more sure of its going off when he charged it again, for it might be wet and damp by lying by? That shews his reason and his judgment, if he did this; it shews it was not the effect of sudden rage and distraction, but a premeditated thing, laid with design and artifice, and that he had the use of his senses and his reason: if that was the cause of his discharging his gun, though no reason is given for it; and what reason could it be? for they do not offer any reason, unless it was to secure it, that the gun should go off; for it having remained charged some time before, it may be moist, and so would not go off: whether he discharged it for that reason, I must leave that to you; he only said he had discharged it. This witness says, he was at that time in a very serene temper, and he never took him to be mad or distracted: he was cunning in all his dealings with him. This witness was a tailor, and had dealings with him as a tailor for some time; he said he paid him very honestly and well, but he was always very hard: He says when he was once with the prisoner before this accident, and the prisoner asked him what sort of a man my lord Onslow was, and what my lady Onslow was; the witness gave them both a good character, and speaking of my lady that she was a good woman; says the prisoner, Why don't she cut my lord Onslow's throat? He says he used to shoot rabbits: and afterwards he went to see him when he was in the house of correction, and he asked him what the people said; and he said the vogue of the people at Guildford was, that he would be hanged; and his friends were much grieved and concerned for him: the prisoner said he desired nobody should be concerned for him. This witness once told him my lord was dead: says he, If he is dead, I can't help it.

Gentlemen, the next witness is Mr. Allen; and he tells you, that soon after this fact was done, the same day he went to him to the house of correction, and examined him; and that he found him in a very sullen mood, and he could get nothing out of him a long time: at last with some persuasion he expressed himself thus: I don't trouble my lord Onslow, pray don't trouble me. He went again the next day, and then he asked him several questions; but he ran on with vehemence against my lord Onslow, as the author of all the tumults, disturbances, and confusions, and wicked devices that had happened in the country. This witness being asked, whether he had declared that he was mad after this examination? He said in answer to that, that he met with the prisoner's two sisters, who asked him of this matter, they asked him if he did not believe their brother was mad? He said, it was the best thing they could say for him, to say that he was mad; he said the prisoner behaved himself very oddly, but positively he never declared that he was mad; he told him he was willing to die, and why did they not kill him? That talking to him further of this matter he asked him if he had any long deliberate intention to kill my lord Onslow, and if he had communicated his design to any persons, or any persons had encouraged him in it? He named two persons, but they were not named by the witness, because it might turn to their prejudice one way or other; but it was asked, whether or no they were my lord Onslow's friends or his enemies? He said, on his then further endeavouring to find out the bottom of the matter, on the prisoner's declaring that such persons had set him on work; the prisoner then intending to sink back, said, he would not bring his friends into trouble. These are the discourses of a prudent man, a man that hath the full use of his understanding: no man talks in a more reasonable way than this. I told you the two persons were not named on debate; it was determined the witness should not name who those two persons were, but should declare whether they were enemies or friends to my lord Onslow; he declared they were my lord Onslow's bitter enemies. This witness gave you a long account of this matter; he said he had reduced it into writing; which was the reason that he so well remembered it; and that made him so very particular.

Upon this the counsel for the king stopped, and left the matter here. Then the prisoner being asked what he had to say for himself, he was a good while before he spoke; but what he said was to this purpose; if he was guilty of any fault, he was sorry for it; but he did not know what to say. This is the substance of what he said.

Then, gentlemen, they have been indulged with all the favour as can be; and to do right to this prosecution, and the counsel for the king, because there hath been an affidavit sworn, that he is not perfect in his senses, they gave liberty to another person to call the witnesses, and put what questions they pleased; they have had all the favour and indulgence imaginable; therefore it is fit to be taken notice of, for the honour of this prosecution, that every thing hath appeared fair to the country, and they may judge of it.

They have produced a great many witnesses: the first is Nathaniel Arnold; he speaks it positively, and says he knows him to be a madman; his father had tried to put him apprentice to several places, but he would not stay: Once he came to see the witness at London, but he would not stay; then he sent him a ship-board, in order to go into Yorkshire; but he would not stay: afterwards he

looked upon him as an unaccountable man; and his father dying he left a reasonable subsistence to keep him from starving, 20*l.* a year; and that was paid him quarterly by this witness: Sometimes he was so distracted that he would lay out all night upon hay-ricks, though he might have come home and laid on a good bed; that the prisoner lives by himself, but hath no manner of convenience about him: this man expresses it in general, that he believes him to be a madman, and always acted like a madman; though he says he was not so much a madman as to be chained and tied up: he says he never had a letter from him; but he could write, and he would press him often for money as quarter-day came.

The next witness is another brother, William Arnold: he says his brother was always distracted, and not in his senses, though not always in so sad a condition as at other times; he would curse and swear very frequently: In his father's time he would curse him, and call him wicked and abominable names, and then burst out into a laughter.

He says his father left him twenty pounds a year; he was always ready for his quarterage, for he would run a score, and the people would dunn him. He says, the 10th of July the prisoner came to his house in London, and told him he could never be easy, for my lord Onslow had bewitched him; and he looked wilder than he used to look; and he gave him money to go home.

And in his father's time he would abuse his father; who, at the request and advice of his neighbours, applied to the late lord Onslow, who had him sent for a marine to the Baltic; but he did not stay, but came home again: And when he misbehaved himself, people would tell him, my lord Onslow would send him again for a soldier. The witness is asked, if he did not hear that he ever threatened the life of my lord Onslow, or say any thing he would do; he tells you he doth not know or remember he did.

Another witness is Mary Arnold the wife of Nathaniel Arnold: she says, she hath seen him often in great disorders, and hath seen him distracted; she hath known him several years, and never heard him speak six words of sense together. He struck his sister so dangerously with a stick he threw at her, that she feared she would have lost the sight of one of her eyes; she reproved him, and he laughed at her for it: and at table he did not sit or feed himself as other people did: she never heard he hurt any body. About a month before this accident happened to my lord Onslow, the prisoner came to her house in a great confusion, and told her he was bewitched by my lord Onslow; and he said the imps danced in his room, and he could not lie in his bed for them; and that the devil did tempt him, and the imps stood by his bed-side! that to the best of her knowledge she never heard him say any thing about my lord Onslow before, or of the design he had against him.

The next witness is Eleanor Arnold, his sister: she says, the prisoner hath been distracted for more than seven years ago, and in all that time was not capable of forming any design: she says, that the 20th of last August he came to the parish-church, and behaved himself in such a manner that they all talked of him as if he was a distracted person; and she contradicts what Mr. Allen said, and doth say that Mr. Allen told her, after the examination, which Mr. Allen hath mentioned to you, that he was a distracted person at that time, and that was his opinion; that he would for hours together talk nonsense, and curse and swear, and he would give no reason for it: she said he would sometimes make a great fire in the parlour when no person hath been there, as if he would fire the house; she hath known him throw burning coals on his father's plate when he was alive, and he would fall often into sudden fits of laughter: sometimes she was afraid he would do mischief to himself; yet no care is taken of him.

Another sister tells you, she thought him distracted and mad, though not so much as of late: and gives you several instances: She says his swearing and cursing to himself, and his sudden fits of laughter, and his talking to inhuman creatures, was in a different manner from what other people did; she mentions the same thing about his going to the church, and the opinion and observation the people made on his behaviour, that they could not imagine but he was mad. This sister says, that Mr. Allen did tell her he was distracted and mad; and she owns she was the person that was struck by this man; and she says she never gave him any provocation for doing it.

Another witness is Gittings: she tells you she always took him for a lunatic, and this for nine years past: he says as the other witnesses say, that he would talk to himself, and swear and curse without any provocation: she speaks as to last March, and that was the first time, and not before: she says that he seemed very much disturbed, and declared, and often complained, that he was plagued by my lord Onslow and his imps: And in May last he had hurt his arms, and she went to one Mr. Howard, who was a surgeon, who applied a plaister to his arm; but the next morning, when the man came to dress it, he had thrown the plaister and things about the room, and said to the man that he would make issues in his arm. Then he complained that Mr. Waite's rooks disturbed him; then after he had ceased to talk of this, he soon began again to talk of my lord Onslow's plaguing him day and night: she says she saw the prisoner in gaol the 23d of last month in the Marshalsea, and that he was in great disorder; and then she asked him how he came to do such a wicked thing? And that he gave her little or no answer that she could make any thing of; and she asked him if any body had set him to do it, and who? and he told her it was one Swetman and Thomas Farmer, two little boys, one about ten, the

other about eleven years old; and she says he told her there were great plagues in the world, and there would be great mourning and lamentation. These are instances she gives of his madness.

The next witness is Mary Martin; and she says, that she heard him declare that my lord Onslow was in his belly; and I think she says they appointed a time to go to my lord Onslow, which was the next morning; and that he opened his breast and cursed and swore, and said, My lord Onslow was in his bosom, and he could neither eat, nor drink, nor sleep, nor be at rest for him.

The next witness, Swetman, tells you that the prisoner was a crazy fellow, and not always in his senses; that he lodged at his house fifteen months before this accident happened, therefore could speak more particularly as to him.

The witness tells you that he used to lend him his gun, but he did not lend it him at this time; but he owns that the prisoner had the gun, though without his leave; he says he was generally worse in spring and fall; he tells you that the prisoner told him, that my lord Onslow had brought a hamper of wine one night to his house, and that next morning he found all the bottles empty; and he said that my lord Onslow had been there revelling, and making so great a noise that he could not be at rest for him: This was half a year before this accident happened. He says that he had the gun to go and shoot Mr. Waite's conies, for which he was to have sixpence a-piece; and the lane where my lord Onslow was shot, leads to the turnip field where Mr. Waite's conies were; which is made some use of in the course of this trial: He says he hath heard him say formerly he would shoot my lord Onslow at the horse-race.

The next witness is John Dedman, who says that the prisoner is a madman; gives an account of his complaining of my lord Onslow; says he had a house, but he had no beds or chairs in it; he says, about five or six years ago he beat his sisters and maids, and he hath been forced to go and make peace among them.

The next witness is one Richard Wheatly; and he says he was his barber; he says he hath shaved the prisoner these two years, and sometimes he was afraid to shave him, he would be swearing all the time; and once he said to the witness, Damn you, cut my throat.

The next is John Tydie: he says he is a very crazy sort of a fellow: he is asked what he means by a crazy sort of a fellow; he says he had several foolish expressions; he hath heard him say the bolleroys and the plagues plagued him so, that he could not rest: He heard him say the same as to the hamper of wine at Swetman's; therefore I will not repeat it.

The next witness, Thomas Poulter, says, he always took him to be out of his mind; once he threatened to kill him, about a fortnight before this accident happened to him, in a field where he was working, swearing and cursing; and at last he said, Damn Tom Onslow, and said he had bewitched him, and he would go to the king, and know the reason why my lord Onslow troubled him so.

The next is Mary Morris: she says she always thought him to be mad by his mad actions; she says he would curse and swear; and that the Saturday before he shot my lord Onslow he came to their house, and talked so, and looked so wildly, that she was frightened: when he was in prison she carried him victuals, and the gaoler bid her bring no bones, nor knife, for they were afraid he would do himself a mischief; then he asked a boy that was with her, whether they were plagued with the bollies and bugs, as formerly?

The next is Stephen Fachin: he says they found him in Loosley lodge, lying only upon the wood, in a morning, about two years since, in the spring of the year, about seven o'clock in the morning.

The next witness is Robert Dandy; and he says he always thought him a crazy man, seldom in his senses; he says he hath threatened to beat his father.

The next is Mary Swetman, the wife of —— Swetman, where he lodged, as hath been observed, for a matter of fifteen months, and at that time, she says, she thought him a madman, not in his right senses. Once they could not prevail upon him to come into the house, because he had said, there were rogues hid, and he did lie out that night. She gives you the same story, about the hamper of wine; and that the prisoner talked to her husband, that there was too great familiarity between her and my lord Onslow. Sometimes he would pretend to read in the Bible: Once he read in the Bible two or three chapters very well. Another time, being worse, she gave him the Bible, and asked him to read; he pretended to read, but repeated most strange stuff as ever was in the world: he then talked of my lord Onslow's plaguing him. She tells you, that he did not lie at home that night before this accident happened, but was home soon in the morning; and he went out, and came back again, and then the boy told him, that Mr. Waite wanted to have his rabbits killed, and the boy and he was to go halves, and the mother did lend him a shilling to buy powder and shot for that purpose. Now it seems, the place where Mr. Waite's conies are, is near the place where this accident happened, so that they would have you think, that this powder and shot, which he bought, was to kill these rabbits, and that he was going that way in order to it. You will remember what was proved to you about the shot, that it was not the usual shot that he bought, but a bigger sort. He went up the lane, the witness tells you, towards the place where Waite's conies were: soon after that, she heard a gun go off, and she thought he had been killing some of the rabbits; but soon after, she saw several horses, and nobody upon them, and some gentlemen, and they came and

asked her for some water and brandy, to relieve my lord Onslow under his misfortune; and then she came to hear, that the gun that went off, instead of killing rabbits, went off against my lord Onslow. She says, she hath heard him say, he would kill my lord Onslow: she says, he hath sometimes threatened to kill her, but yet did not do her any harm. They think this evidence so very material, that they have produced two witnesses, that tell you, that they heard this Mary Swetman say the very same things to them, as she hath now given in evidence.

The next is Mr. Copeland: he says, he was with the prisoner in the Marshalsea, and then he asked him, What induced him to do so horrid a fact? He said, My lord Onslow had bewitched him: he asked him, If any body had put him upon it? At first he hesitated, but afterwards he said, Nobody. He was very confused, and he thought him mad.

The next is Mr. Darby; he said, he often examined him, could get no answer from him, but said, My lord Onslow had bewitched him, and was a trouble to him. This is the evidence on behalf of the prisoner, to show that the prisoner is mad, and what he did, as such, is no crime; and therefore no great weight ought to be laid upon it.

But by way of reply, they have read papers under his own hand. Mr. Barwell Smith, he was with him, and he hath proved them to be his hand. One paper is the state of his case, and the witness writ it; but he took it from his own mouth, which is the same as if he had writ it himself, and the prisoner signed it. It happened to be blotted; this is mentioned to show his sense, and that he was a man of distinction; says he, You have blotted it, it can't be read, it must be writ over again: the witness told him, No, it would do; Well, if it be so, I will be satisfied; and he desired the witness to pray my lord Onslow, that his irons might be taken off, for they were very grievous to him. The next paper is (here are three) a letter writ with his own hand; and here is another letter writ with his own hand: both sides agree, that the jury might have the papers to peruse. In this paper, he says, He was excited to this by ——— and the resentment he expressed to my lord Onslow, proceeded from several persons persuading him, that my lord Onslow was the occasion of all his troubles, and several persons came here, and took the advantage of it, and told him, that he was the occasion of all his troubles: this he gives you as the occasion of his great resentment against my lord Onslow: this is as rational an account as any mortal man can give. Then there is this letter, there he writes to my lord Onslow; it is directed, To the reverend lord Onslow; but in the letter it is, Please your honour to take into your consideration, &c. and the other letter is much to the same purpose: these you will have along with you.

Then you have Mr. Coe, and he went to him the day the fact was committed, and at that time he would say nothing to him: the next day he went again, and then he said, My lord Onslow was the occasion of all his troubles. The third day he went, and asked him, If he intended to kill my lord Onslow? and he said, Yes, to be sure? Where did you intend to hit him? Says he, When I shoot at a rabbit, I always aim at his head. He went to him again, when he was in the Marshalsea; and he was very ill; and he asked for some white-wine for him, but he said, The white-wine was too sharp for his stomach: and then he called for some sack, which he had; and he held down his head, and seemed in a bad condition: that he pressed him to know who set him on work; and he said, If my lord will come here himself, let him; but let him not send any more of his fools after me. This gentleman says, he was his schoolfellow: he was just of the same nature then; a rugged, dogged, humoursome fellow, hardly cared to talk or speak to any body; he is just the same now, though he hath had no conversation with him since; but about two years ago, he saw him, and he had a fish in his hand to sell, and he asked to buy it, and offered him sixpence for it; No, says he, it is honestly worth a shilling, and a shilling I will have. This is mentioned, to shew that he was a man very sensible, made a very sensible answer: no man could make a properer answer than this man did.

This is the evidence on both sides. Now I have laid it before you; and you must consider of it: and the shooting my lord Onslow, which is the fact for which this prisoner is indicted, is proved beyond all manner of contradiction; but whether this shooting was malicious, that depends upon the sanity of the man. That he shot, and that wilfully [is proved]: but whether maliciously, that is the thing: that is the question; whether this man hath the use of his reason and sense? If he was under the visitation of God, and could not distinguish between good and evil, and did not know what he did, though he committed the greatest offence, yet he could not be guilty of any offence against any law whatsoever; for guilt arises from the mind, and the wicked will and intention of the man. If a man be deprived of his reason, and consequently of his intention, he cannot be guilty; and if that be the case, though he had actually killed my lord Onslow, he is exempted from punishment: punishment is intended for example, and to deter other persons from wicked designs; but the punishment of a madman, a person that hath no design, can have no example. This is on one side. On the other side, we must be very cautious; it is not every frantic and idle humour of a man, that will exempt him from justice, and the punishment of the law. When a man is guilty of a great offence, it must be very plain and clear, before a man is allowed such an exemption; therefore it is not every kind of frantic humour or something unaccountable in a man's actions, that points him out to be such a madman as is to be exempted from punishment:

it must be a man that is totally deprived of his understanding and memory, and doth not know what he is doing, no more than an infant, than a brute, or a wild beast, such a one is never the object of punishment; therefore I must leave it to your consideration, whether the condition this man was in, as it is represented to you on one side, or the other, doth shew a man, who knew what he was doing, and was able to distinguish whether he was doing good or evil, and understood what he did: and it is to be observed, they admit he was a lunatic, and not an ideot. A man that is an ideot, that is born so, never recovers, but a lunatic may, and hath his intervals; and they admit he was a lunatic. You are to consider what he was at this day, when he committed this fact. There you have a great many circumstances about the buying the powder and the shot; his going backward and forward: and if you believe he was sensible, and had the use of his reason, and understood what he did, then he is not within the exemptions of the law, but is as subject to punishment as any other person.* Gentlemen, I must leave it to you.

Then the Jury withdrew to consider of their verdict, and in a short time returned again.

Cl. of the Arr. Gentlemen, answer to your names.

Foreman. Here. And so the rest.

Cl. of the Arr. Gentlemen, are you all agreed on your verdict?—*Jury.* Yes.

Cl. of the Arr. Who shall say for you?

Jury. Our Foreman.

Cl. of the Arr. Edward Arnold, hold up thy hand. (Which he did.) Look upon the prisoner, How say you, Is Edward Arnold Guilty of the felony whereof he stands indicted, or Not Guilty?—*Foreman.* Guilty.

Cl. of the Arr. What goods or chattels, lands or tenements?

Foreman. None, to our knowledge.

Cl. of the Arr. Then hearken to your verdict, as the Court hath recorded it. You say Edward Arnold is Guilty of the felony whereof he stands indicted; and that he had not any goods or chattels, lands or tenements at the time of the felony committed, nor at any time since, to your knowledge; and so you say all.

Whereupon, he received sentence of death; but at the intercession of the right honourable the lord Onslow, his execution was respited: and he continued a prisoner in the new gaol, Southwark, upwards of thirty years, and there died.

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* What kinds and degrees of privation or perversion of understanding should exempt a man from liability to legal punishment are questions of some nicety. They were considered in the case of lord Ferrers, A. D. 1760. (See in particular the very able speech of Mr. Yorke) and were admirably investigated and illustrated by the present lord Erskine, in his defence of Hadfield, A. D. 1800. See, too, the Case of Bellingham at the Old Bailey in this present month of May, 1812. It is very well known that a man afflicted by a high degree of perversion, nay of privation, of understanding, may yet be capable of associating, and may actually associate, in his mind, the ideas of offence and punishment, so that this association shall have a powerful influence upon his conduct. Thus in the places, where such pitiable patients are received, for the purposes of cure or of safe custody, severities are exercised upon them in the way of punishment, and are found to operate (not uniformly, nor indeed constantly; neither does the dread of punishment operate uniformly or constantly upon that part of mankind, which is suffered to be at large) in preventing a repetition of offence by the sufferers, and the commission of offence by others, who have been witnesses of those sufferings. There are in the case of the Attorney General *v.* Parnther some good observations of lord Thurlow on the operation of mental derangement to incapacitate a party from doing acts binding on himself and others.

466. The Trial of THOMAS Earl of Macclesfield,* Lord High Chancellor of Great Britain, before the House of Lords, for High Crimes and Misdemeanors in the Execution of his Office: 10 GEORGE I. A. D. 1725.

THE FIRST DAY.—*May 6.*

ABOUT eleven of the clock, the Lords being seated in their House, the Managers for the House of Commons being in the conveniencies made for them at their lordships' bar, Thomas earl of Macclesfield, having a stool placed for him within the bar, and his counsel, viz. Mr. Serjeant Probyn,† Doctor Sayer, Mr. Lingard, common serjeant of the city of London, Mr. Robins, and Mr. Strange,‡ standing near him at the bar, the serjeant at arms made proclamation as follows:

Serj. at Arms. Oyez! Our sovereign lord the king strictly charges and commands all manner of persons to keep silence, upon pain of imprisonment.

Then the serjeant at arms again made proclamation as follows:

Serj. at Arms. Oyez! Whereas a charge of High Crimes and Misdemeanors has been exhibited by the House of Commons in the name of themselves, and of all the Commons of Great Britain, against Thomas earl of Macclesfield; all persons concerned are to take notice, that he now stands upon his trial, and they may come forth in order to make good the said charge.

Then the clerk-assistant, by direction of the Lord Chief Justice King, Speaker of the House of Lords, read the Articles of Impeachment, the earl of Macclesfield's Answer, and the Replication of the House of Commons, as follows:

ARTICLES

EXHIBITED BY THE KNIGHTS, CITIZENS, AND BURGESSES IN PARLIAMENT ASSEMBLED, IN THE NAME OF THEMSELVES, AND OF ALL THE COMMONS OF GREAT BRITAIN, AGAINST THOMAS EARL OF MACCLESFIELD IN MAINTENANCE OF THEIR IMPEACHMENT AGAINST HIM FOR HIGH CRIMES AND MISDEMEANORS.

Whereas the office of Lord Chancellor of Great Britain is an office of the highest dignity and trust, upon the impartial and uncorrupt execution whereof the honour of the crown, and the welfare of the subjects of this kingdom greatly depend: And whereas Thomas earl of Macclesfield, in or about the month of May, in the year of our Lord 1718, by the great grace and favour of his most excellent majesty, was constituted and appointed Lord Chancellor of Great Britain, and did thereupon take the usual oath for the due execution of that high office; whereby he did swear well and truly to serve our sovereign lord the king, and his people, poor and rich, after the laws and usages of this realm, and such other oaths as have been accustomed; and the said Earl continued in this great office until about the month of January, in the year of our Lord, 1724, and in right thereof was entrusted with the nomination and admission to the offices of Masters of the Court of Chancery, which Masters of the said Court are officers of great trust sworn to serve the king and his people, and associated to the Lord Chancellor for his assistance in the due administration and execution of justice in the said Court: and whereas his majesty, upon the said Earl's being appointed to the office of Lord Chancellor, did, of his grace and bounty, bestow upon the said Earl the sum of 14,000*l.* or some other great sum, and did likewise grant unto George Parker, esq. now commonly called lord Parker, eldest son and heir apparent of the said Earl, a yearly pension of 1,200*l.* payable out of his majesty's receipt of the Exchequer, during the joint lives of his majesty and the said lord Parker, determinable upon his majesty's making a grant to the said lord Parker, in possession of the office of one of the tellers of his ma-

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* Lord Macclesfield had in 1710 succeeded Holt as Chief Justice of the Queen's-bench, from which he was removed to the office of Lord Chancellor in 1718. He was one of the managers in the Trial of Sacheverell, as to which, see vol. 15, p. 1. Swift in his virulent party pamphlet, "The Public Spirit of the Whigs," &c. imputed to lord Macclesfield, upon what foundation I know not, and probably Swift cared not, that he had often drunk the abdicated king's health upon his knees. After Swift's own conduct it required his shamelessness to apply a charge of political tergiversation to the reflection that "transition is natural and frequent."

As to statesmen who, having been active in the impeachment of others, were themselves afterwards impeached, see a Note at the end of Gregg's Case, vol. 14, pp. 1394, 1395, 1396, and the duke of Wharton's speech in Atterbury's Case, p. 691, of this volume.

For other proceedings relative to this Case which were had in parliament, see the Eighth Volume of the New Parliamentary History.

† In 1726 a Justice of B. R.; in 1740 Chief Baron of Exchequer.

‡ In 1736 Solicitor General; in 1750 Master of the Rolls.

jesty's Exchequer, for the term of his natural life, which office being of the yearly value of 1,500*l.* or upwards, has been since granted by his majesty unto the said lord Parker for his life, who in or about the month of July, in the year of our Lord 1719, was duly admitted to, and doth still enjoy the same; and the said Earl during the time of his continuing Lord Chancellor of Great Britain, did not only enjoy the usual salary, fees, and profits belonging to his office, of a very great annual value, but also did continue to receive an annual pension of 1,200*l.* which his majesty in or about the month of June, in the year of our Lord 1716, had granted to him and his assigns, during his majesty's life; and did likewise receive from the crown a further annual allowance of 4,000*l.* and many other advantages: yet the said Thomas earl of Macclesfield, not being satisfied with this large and ample revenue, nor regarding the obligation of his oath, or the duty of his high and important office, but entertaining wicked and corrupt designs and views, to raise and procure to himself excessive and exorbitant gain and profit, by divers unjust and oppressive practices and methods herein after-mentioned, whilst he continued in the said office of Lord Chancellor, did illegally, corruptly, and extorsively take and receive to his own private use the following, or some other great sums of money.*

ARTICLE I.

That Richard Godfrey, esq. having contracted with sir Thomas Gery, one of the Masters of the Court of Chancery, for the purchase and surrender of his office,† at the price of 5,000*l.* or some other great sum of money; the said Thomas earl of Macclesfield, whilst he continued Lord Chancellor of Great Britain, and before the admission of the said Richard Godfrey into the office of one of the Masters of the Court of Chancery, did, by colour of his office of Lord Chancellor, illegally, corruptly, and extorsively insist upon, take and receive of and from the said Richard Godfrey the sum of 840*l.* or some other sum of money, for the admitting him into such office of a Master of the Court of Chancery, and to the intent that the said Richard Godfrey should have, exercise and enjoy the same, which said office touches and concerns the administration and execution of justice in the said Court; and the said Thomas earl of Macclesfield, being Lord Chancellor, in pursuance and execution of the said wicked and corrupt bargain, or in pursuance of some other bargain or agreement of the same infamous and corrupt nature, did admit and swear the said Richard Godfrey into the office of one of the Masters of the said Court of Chancery, upon the surrender of the said sir Thomas Gery, in breach and violation of his oath as Lord Chancellor, and of the great trust in him reposed, contrary to the duty of his office, and against the good and wholesome laws and statutes of this realm.

ARTICLE II.

That the office of one of the Masters of the said Court of Chancery becoming vacant by the death of Samuel Browning, esq. one of the late Masters of the said Court; the said Thomas earl of Macclesfield, whilst he continued Lord Chancellor of Great Britain, and before the admission of James Lightboun, esq. into the said office of one of the Masters of the Court of Chancery, did, by colour of his office of Lord Chancellor, illegally, corruptly, and extorsively insist upon, take and receive of and from the said James Lightboun the sum of 6,000*l.* or some other great sum of money, in consideration of, and for the admitting him into such office, and to the intent that the said James Lightboun should have, exercise and enjoy the same, which said office touches and concerns the administration and execution of justice in the said Court; and the said Thomas earl of Macclesfield, being Lord Chancellor, in pursuance and execution of the said wicked and corrupt bargain, or in pursuance of some other bargain or agreement of the same infamous and corrupt nature, did admit and swear the said James Lightboun into the office of one of the Masters of the said Court of Chancery, in breach and violation of his oath as Lord Chancellor, and of the great trust in him reposed, contrary to the duty of his office, and against the good and wholesome laws and statutes of this realm.

ARTICLE III.

That John Borret, esq. having contracted with John Meller, esq. one of the Masters of the Court of Chancery, for the purchase and surrender of his said office, at the price of 9,000*l.*, or some other great sum of money; the said Thomas earl of Macclesfield, whilst he continued Lord Chancellor of Great Britain, and before the admission of the said John Borret, into the office of one of the Masters of the Court of Chancery, did, by colour of his office of Lord Chancellor, illegally, corruptly, and extorsively insist upon, take and receive of and from the said John Borret the sum of 1,575*l.*, or some other sum of money, for the admitting him into such office of a Master of the said Court of Chancery, and to the intent that the said John Borret should have, exer-

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* Concerning the sale of Offices, see Parl. Debates, May and June, 1809.

† In a debate upon the Bill "for enabling the Lords Commissioners of the Great Seal, to execute the office of Lord Chancellor or Lord Keeper," (stat. 1 William and Mary, c. 21,) a clause was proposed to prohibit the sale of the places of Masters of Chancery, but it was rejected. See Lords' Journal, March 25, 1689.

Collins explains a passage in Ambrose Phillips's Ode on the death of lord Cowper, by stating that he was the first Chancellor who refused the New-year's-gifts, which the counsel had till his time presented to that high officer.

did receive from the said persons for their respective admissions into such offices, and before they were admitted thereunto, and in order that the said persons should have, exercise and enjoy the same, in great breach of the trust in him reposed, and of his oath as Lord Chancellor, contrary to the duty of his office, and against the laws and statutes of this realm.

ARTICLE XI.

That the said Thomas earl of Macclesfield, whilst he continued in the office of Lord Chancellor of Great Britain, in order to advance and increase the illegal and corrupt gain arising to himself from the sale and disposal of the offices of Masters of the Court of Chancery, in violation of the great trust reposed in him for the care and protection of the suitors of the said Court, whose money and effects were, by orders of the said Court, lodged in the hands of the Masters of the said Court of Chancery, did admit several persons to the said offices of Masters of the said Court of Chancery, who, at the time of such their admissions, were of small substance and ability, very unfit to be trusted with the great sums of money and other effects of the suitors of the said Court, lodged in their hands by the orders of the said Court; and did publicly, in open court, when he sat there as Lord Chancellor, falsely represent the said persons, so by him admitted to the offices of Masters of the said Court of Chancery, as persons of great fortunes, and in every respect qualified for the trust reposed in them, to the manifest deceit and injury of the suitors of the said Court.

ARTICLE XII.

That whilst the said Thomas earl of Macclesfield executed the said office of Lord Chancellor, an unjust and fraudulent method was practised in the Court of Chancery upon the sale of the offices of Masters of the said Court, and upon the admissions of new Masters, that the prices or sums of money agreed to be paid for the purchase of the said offices, and for the admissions thereinto, were satisfied and paid out of the monies and effects of the suitors of the Court deposited in the hands of the respective Masters, surrendering their offices, or dying, either by way of retainer of the purchase money in the hands of the Master resigning, or of replacing the money disbursed for such purchase or admission by the succeeding Master, out of the money and effects of the suitors coming into his hands; by which practice the price and value given upon the sale of the said offices, and admissions thereinto, during the time aforesaid, were greatly advanced, and several persons of small ability and substance were encouraged to contract for the said offices, upon a prospect of the easy method of paying for the purchase of the same, by means whereof great deficiencies have incurred in the offices of several Masters of the said Court, admitted by the said Thomas earl of Macclesfield, which they have not been able to answer and make good; and although the said practice was notorious and public, and the said Earl was well informed thereof, and fully acquainted therewith, yet the said Thomas earl of Macclesfield, in order to increase his own unjust and corrupt profit in the selling the said offices, and the admissions thereto (which in consequence of this evil practice was raised and received by him out of the effects of the suitors, for whom he was entrusted) did not at any time, whilst he continued in his office of Lord Chancellor, use or take any measures to reform the said abuse, or to prevent the same, either by causing proper schedules to be taken of the money and effects of the suitors delivered over and transferred, or by appointing any person, in his behalf, to inspect or supervise the transfers or deliveries thereof, or in any other manner; but on the contrary, the said Thomas earl of Macclesfield, unjustly, corruptly, and contrary to the duty of his said office of Lord Chancellor (to whom the superintendency of the said Masters, and of their accounts did appertain) did suffer the said fraudulent practice to proceed and be exercised without any controul or check, whereby great embezzlements have been made of the suitors' money and effects, to their great loss, in the offices of several of the Masters of the said Court, who have not been able to answer and pay their respective balances owing upon their accounts, in breach of the trust reposed in him for the preservation of the estates and effects of the suitors, to the dishonour and discredit of the said Court, and to the great injury and defrauding of the said suitors, in a court of equity, established for their relief and protection.

ARTICLE XIII.

That Fleetwood Dormer, esq. one of the Masters of the Court of Chancery, having embezzled great part of the money and effects belonging to the suitors of the said Court, with which he was entrusted by the said Court, and disposed of the same for his own private advantage, by means whereof there became, and still continues a great deficiency in that office, to the amount of 25,000*l.*, or some other great sum; and the said Fleetwood Dormer, having absconded, and for some time absented himself, application was made to the said earl of Macclesfield, then Lord Chancellor of Great Britain, to secure the person of the said Fleetwood Dormer, and to take proper methods for compelling the said Fleetwood Dormer to make satisfaction to the suitors for the money and effects which he had so embezzled, yet the said Earl, from an apprehension that a public discovery of the said deficiency might lessen the unjust gain he proposed to make to himself, by selling and disposing of the said offices of Masters of the said Court, neglected and declined either to secure the person of the said Fleetwood Dormer, and his estate and effects, or to make a proper enquiry into the said deficiency: but, on the contrary, the said Earl, whilst he continued Lord Chancellor of Great

Britain, did endeavour, by many indirect practices, to conceal from the suitors of the Court the true state and condition of the said office, as well with respect to the effects of the said Fleetwood Dormer, as to the debt due from him to the suitors of the Court; and upon motion made in the said Court of Chancery (after the said Earl knew that the said Fleetwood Dormer had so absconded) on behalf of some of the suitors of the Court, to have their effects transferred from the said Fleetwood Dormer to some other Master, for the better securing thereof, the said earl of Macclesfield, (in order to delude the suitors of the said Court into a belief that their effects were safe, and thereby to prevent a public enquiry) then sitting as Lord Chancellor in open court, did say, That the said parties need not be in haste; and did at the same time falsely and deceitfully declare, that the said Fleetwood Dormer was only gone to take the air in the country, and that he would return in a little time, and all would be well, or to that effect.

ARTICLE XIV.

That the said Fleetwood Dormer, having towards satisfaction of the suitors of the said Court, assigned to Henry Edwards, esq. (who succeeded him in his office of Master of the said Court of Chancery) a debt of 24,046*l.* 4*s.*, or some other great sum, due from William Wilson, a banker, to the said Fleetwood Dormer, to the intent that the money received on account thereof should be applied and disposed of as the said Court of Chancery should order and direct, the said Thomas earl of Macclesfield, whilst he continued Lord Chancellor of Great Britain, for the unlawful purposes aforesaid, without regard to the interest of the said suitors, by colour of his office, did in an unwarrantable, clandestine, and unusual manner, authorize, direct, and establish a precarious and trifling composition with the said William Wilson, upon the terms of the said William Wilson's paying the sum of 1,463*l.* 2*s.* 1*d.*, and assigning 10,000*l.*, part of a debt of 22,060*l.* 12*s.* 5*d.*, pretended to be due to the said William Wilson from Edward Poulter, or to that effect, in discharge of the said debt; and to that end, upon the report of John Hiccocks, esq. then one of the Masters of the said Court, without any attendance ordered or had thereupon, and without notice to the said suitors, did, by a private order not made in open court, order the said Henry Edwards to accept of the said composition, in full discharge of the said debt, which said Edward Poulter was a person insolvent, and has since absconded for debt, and none, or but a very small part of the said 10,000*l.* has been, or is ever likely to be received.

ARTICLE XV.

That the said Thomas earl of Macclesfield, whilst he continued Lord Chancellor of Great Britain, to carry on his corrupt and unjust purposes, and to conceal the deficiency that was in the office of the said Fleetwood Dormer, did, in or about the month of February, in the year of our Lord 1720, order the several Masters of the said Court of Chancery to bring in their accounts of the cash, effects, and securities in their hands belonging to the suitors of the Court, not with a design of examining their accounts, or securing the estate and effects of the suitors, but with an intent to terrify the said Masters, and thereby oblige them to contribute great sums of money towards answering the demands that should from time to time be made upon the said office; for which purpose he the said Earl did at several times represent, or cause to be represented to the said Masters, that if they refused so to do, the money and effects of the suitors would be taken out of their hands, and the said Masters deprived of making any profit of the same;* by which practices the said Earl, being then Lord Chancellor of Great Britain, by colour of his authority, did persuade and induce nine of the Masters of the said Court of Chancery, to pay 500*l.* each for the purposes aforesaid, several of whom paid the same out of the money or effects of the suitors in their hands; but after such payments, the said Thomas earl of Macclesfield did not oblige the said Masters to deliver in their accounts in pursuance of such his said order.

ARTICLE XVI.

That Elizabeth Chitty, widow, having obtained an order of the Court of Chancery, on or about the 17th day of March, in the 10th year of his present majesty's reign, made by the said Thomas earl of Macclesfield, then Lord Chancellor, whereby Henry Edwards, esq. one of the Masters of the said Court of Chancery, who succeeded Fleetwood Dormer, esq. in the said office, was ordered to pay her the sum of 1,000*l.* part of the sum of 10,000*l.* or other great sum of money, formerly paid into the hands of the said Fleetwood Dormer, as a Master of the said Court, and by the said order mentioned to be then in the hands of the said Henry Edwards; and the said Henry Edwards complaining to the said Earl, that the making orders upon him to pay money which had been received by the said Fleetwood Dormer, was a very great hardship upon him the said Henry Edwards, in regard he had not any money or effects in his hands to answer such demands; the said earl of Macclesfield, being then Lord Chancellor, in further prose-

* As to the practice by public officers of making interest of money, of which the custody is entrusted to them, as such officers, see the statutes 22 Geo. 3, c. 81, 23 Geo. 3, c. 50, and the debates which took place during their progress through the Houses of Parliament, the Case of Lord Melville, A. D. 1806, and the debate in the House of Commons on June 19th, 1812. See, too, some debates which occurred in that House concerning the business of Messrs. Powell and Bembridge, A. D. 1783.

cution of his unjust and corrupt purposes, did, by colour of his authority, endeavour to prevail with the Masters of the said Court of Chancery, to raise the said sum of 1,000*l.* out of their effects, by representing to them, that a discovery of the deficiency in the said office might occasion a parliamentary or public enquiry into the nature and condition of their offices, and hazard the forfeiture of the same, by reason of their having bought the said offices, contrary to law, which the said Earl then declared would affect him, but themselves much more, or to that effect; but the said Masters refusing to raise the said sum of 1,000*l.* the said earl of Macclesfield did order his secretary, Peter Cottingham, esq. to pay the said 1,000*l.*; who in pursuance of the said Earl's directions, in or about the month of July, 1724, did pay the same to Ascan Christopher Lochman, for the use of the said Elizabeth Chitty; and the said earl of Macclesfield, upon application made to him by the said Ascan Christopher Lochman for payment of the said money, did acquaint him, that he, the said Earl, had given directions to his secretary for payment of that sum; but at the same time declared to the said Ascan Christopher Lochman, that he, the said Earl, believed this would be the last payment she was like to receive out of the said money paid into the hands of the said Fleetwpod Dormer, for the residue thereof was in great danger of being lost, by reason of the deficiency in the effects of the said Fleetwood Dormer, or to that effect. Notwithstanding all which proceedings, in this and several other Articles mentioned, upon a motion made in the Court of Chancery before the said Thomas earl of Macclesfield, then Lord Chancellor, on or about the 5th day of December last, in a cause there depending between Jane Harper, plaintiff, and Thomas Case, and others, defendants, relating to the sums of 260*l.* or some other sum, deposited in the hands of the said Fleetwood Dormer, before his absconding, and which was then apprehended in great danger of being lost, the said Thomas earl of Macclesfield, then sitting in court as Lord Chancellor, did publicly, falsely, and deceitfully declare, that he had heard there was a deficiency in the office of the said Fleetwood Dormer, but that he, the said Earl, knew nothing of it, only as public news, or to that effect; and thereupon did order, that the said Henry Edwards should examine in what manner the said 260*l.* was deposited with the said Fleetwood Dormer, and whether there was likely to be a loss of any money deposited with the said Fleetwood Dormer.

ARTICLE XVII.

That notwithstanding the said earl of Macclesfield well knew that there was a very great deficiency and loss by the failure of the said Fleetwood Dormer, and that the said Henry Edwards, his successor, had not sufficient in his hands to pay the whole money due to the suitors of the Court, that had been received by the said Fleetwood Dormer on their account; yet the said earl of Macclesfield, being Lord Chancellor, in order to carry on his unjust designs of concealing the said deficiency, and to prevent any public enquiry that might arise from the just complaints of the suitors of the said Court, did, from time to time, in manifest and wilful violation of the trust reposed in him, make orders on the said Henry Edwards for payment of the money belonging to several particular suitors, which had been lodged in the hands of the said Fleetwood Dormer; in obedience to which orders several sums were paid, without regard to, or consideration of, the proportion which the rest of the suitors were intitled to out of the effects of the said Fleetwood Dormer, whereby many of the said suitors lost the benefit of their proportionable share, to which in justice they were entitled.

ARTICLE XVIII.

That the said Thomas earl of Macclesfield, notwithstanding that he very well knew, and was informed that the Masters of the said Court did, or that it was in their power, from time to time, and at their pleasure to dispose of and employ the money and effects belonging to the suitors of the said Court, which were entrusted with them respectively; and more particularly, that the deficiency appearing in the office of Fleetwood Dormer, esq. one of the Masters of the Court of Chancery, was chiefly occasioned by his, the said Fleetwood Dormer's having taken upon himself unduly to dispose of and employ the money and effects belonging to the suitors of the said Court, which were entrusted in his hands; and notwithstanding that, soon after the said Fleetwood Dormer became insolvent, it was represented and proposed to the said Thomas earl of Macclesfield, then Lord Chancellor of Great Britain, in order to prevent for the future any losses that might happen to the suitors of the said Court, that the several effects and securities belonging to the suitors should be placed out in such manner, as that the power of disposing, employing, or in any manner trading with the same, might be totally taken away from the said Masters, for the effecting of which just design, a particular method was laid before the said Earl; and it was also further proposed, that the said Masters should give some reasonable security to answer the balance of such cash as should, from time to time, be in their hands; and notwithstanding the said Earl was credibly informed, that the sufficiency of some other of the said Masters was very much suspected, yet the said Thomas earl of Macclesfield, whilst he was Lord Chancellor of Great Britain, contrary to the duty of his office, and thereby proposing to make unlawful gain to himself by the disposal and sale of the offices of Masters of the said Court of Chancery; and in order to induce persons to give him, the said Earl, a greater

price or reward for their being admitted to the same, did not require or demand any security whatsoever to be given by any of the said Masters, upon their being admitted to their offices, or at any other time; and the said Earl with the same corrupt view and intention, and to keep up the price of the said offices, totally neglected to enquire into the accounts of the said Masters, and did fraudulently, unjustly, and in breach of the trust reposed in him, permit and encourage the Masters of the said Court, to employ and traffic with large sums of money belonging to the suitors of the said Court, and to make interest thereof for their own unjust gain and profit; and the said Earl, after such proposal made to him, as aforesaid, or at any other time, during his continuance in the said office, did not take any care that the effects of the said suitors should be placed out in such manner, as to prevent the Masters from trafficing therewith, or that the said Masters should give such security as was proposed; by means whereof great deficiencies, to the amount of many thousand pounds, have been, through such default of the said Earl, occasioned in the offices of several other of the Masters, to the great loss and injury of the suitors of the said Court.

ARTICLE XIX.

That whereas his most sacred majesty, out of his fatherly goodness to his people, did, in or about the month of November last, direct an enquiry to be made into the accounts of the Masters of the said Court of Chancery, to the intent that proper methods might be taken for the security of the suitors of the said Court; the said Thomas earl of Macclesfield, being then Lord Chancellor of Great Britain, and one of his majesty's most honourable privy council, in order to obstruct the same, and to prevent a parliamentary enquiry into the state and condition of the offices of the said Masters, in breach of the several great trusts reposed in him, did give advice and encouragement to the said Masters to assist and supply each other with money and effects, and did represent to the said Masters, that it would be for their honour and service, to appear able and sufficient, and that, if they made a bold stand now, it might prevent a parliamentary enquiry, or to that effect; and did persuade several of them to make false representations of their circumstances to his majesty, by adding a subscription to their respective accounts delivered to the said Earl, to be laid before his majesty, to the effect following, (viz.) That they were able to answer the money and securities in their hands, and were willing to pay the same to such persons as were entitled thereunto; although the said Earl knew, or had good reason to believe, that several of the Masters were not then able to answer the balance of their accounts, nor are they yet able to satisfy or make good the same; and when the said Masters were afterwards required to produce the cash and effects of their suitors in their hands, some of the said Masters, according to such advice and encouragement given by the said Earl, did supply others of them with cash and effects, to make a false shew and appearance of their ability and readiness to answer the balance of their accounts.

ARTICLE XX.

That the said Thomas earl of Macclesfield, whilst he continued in the office of Lord Chancellor of Great Britain, in breach of the trust reposed in him, and contrary to the duty of his office, did, at several times, borrow and receive of some of the Masters of the said Court, several great sums of the money belonging to the suitors of the said Court, deposited in the hands of such Masters, and did make use thereof for his own private service and advantage, so long as he had occasion for the same.

ARTICLE XXI.

That the said Thomas earl of Macclesfield, whilst he continued Lord Chancellor of Great Britain, did in an illegal and arbitrary manner, extend the power and authority of Lord Chancellor, and of the Court of Chancery, beyond their lawful and just bounds, and did arbitrarily and illegally assume to himself, as Lord Chancellor, and by colour of office, an unjust and unlimited power of dispensing with, suspending and controuling the statutes of this realm, made for the security and preservation of the estates and prpperties of the subjects of this kingdom, to the great oppression of the suitors of the said Court, in subversion of the laws and statutes of this realm, in manifest breach and violation of the rights and liberties of his majesty's good subjects, and of his own most solemn oath, as Lord Chancellor of Great Britain; and more especially, when Francis Tyson, esq. deceased, being seized, and possessed of a real estate of the value of 3,000*l.* per annum, or some other great annual value, did, by his last will and testament in writing, duly executed, in or about the month of October, 1717, give and devise all his said real estate to the child his wife was at that time enseint with (if such child should be a son) for his life without impeachment of waste, with remainders to the first, and other sons of the said infant in tail male, and did likewise, by such will, expressly nominate and appoint his said testator's wife, Rachel Tyson, to be the guardian of all his children during their respective minorities, if she should so long continue a widow; and the said Francis Tyson soon after died, leaving one daughter, and the said Rachel, his widow, with child, after whose decree the said Rachel was delivered of such child, being a son, afterwards named Francis John Tyson, in whose right, by virtue of the said will and of the statute made in the 12th year of the reign of king Charles the second, entituled, "An Act for the taking away the court of wards and liveries, and tenures in capite, and by knights service, and purveyance, and for settling a revenue upon his majesty in lieu

cution of his unjust and corrupt purposes, did, by colour of his authority, endeavour to prevail with the Masters of the said Court of Chancery, to raise the said sum of 1,000*l.* out of their effects, by representing to them, that a discovery of the deficiency in the said office might occasion a parliamentary or public enquiry into the nature and condition of their offices, and hazard the forfeiture of the same, by reason of their having bought the said offices, contrary to law, which the said Earl then declared would affect him, but themselves much more, or to that effect; but the said Masters refusing to raise the said sum of 1,000*l.* the said earl of Macclesfield did order his secretary, Peter Cottingham, esq. to pay the said 1,000*l.*; who in pursuance of the said Earl's directions, in or about the month of July, 1724, did pay the same to Ascan Christopher Lochman, for the use of the said Elizabeth Chitty; and the said earl of Macclesfield, upon application made to him by the said Ascan Christopher Lochman for payment of the said money, did acquaint him, that he, the said Earl, had given directions to his secretary for payment of that sum; but at the same time declared to the said Ascan Christopher Lochman, that he, the said Earl, believed this would be the last payment she was like to receive out of the said money paid into the hands of the said Fleetwood Dormer, for the residue thereof was in great danger of being lost, by reason of the deficiency in the effects of the said Fleetwood Dormer, or to that effect. Notwithstanding all which proceedings, in this and several other Articles mentioned, upon a motion made in the Court of Chancery before the said Thomas earl of Macclesfield, then Lord Chancellor, on or about the 5th day of December last, in a cause there depending between Jane Harper, plaintiff, and Thomas Case, and others, defendants, relating to the sums of 260*l.* or some other sum, deposited in the hands of the said Fleetwood Dormer, before his absconding, and which was then apprehended in great danger of being lost, the said Thomas earl of Macclesfield, then sitting in court as Lord Chancellor, did publicly, falsely, and deceitfully declare, that he had heard there was a deficiency in the office of the said Fleetwood Dormer, but that he, the said Earl, knew nothing of it, only as public news, or to that effect; and thereupon did order, that the said Henry Edwards should examine in what manner the said 260*l.* was deposited with the said Fleetwood Dormer, and whether there was likely to be a loss of any money deposited with the said Fleetwood Dormer.

ARTICLE XVII.

That notwithstanding the said earl of Macclesfield well knew that there was a very great deficiency and loss by the failure of the said Fleetwood Dormer, and that the said Henry Edwards, his successor, had not sufficient in his hands to pay the whole money due to the suitors of the Court, that had been received by the said Fleetwood Dormer on their account; yet the said earl of Macclesfield, being Lord Chancellor, in order to carry on his unjust designs of concealing the said deficiency, and to prevent any public enquiry that might arise from the just complaints of the suitors of the said Court, did, from time to time, in manifest and wilful violation of the trust reposed in him, make orders on the said Henry Edwards for payment of the money belonging to several particular suitors, which had been lodged in the hands of the said Fleetwood Dormer; in obedience to which orders several sums were paid, without regard to, or consideration of, the proportion which the rest of the suitors were intitled to out of the effects of the said Fleetwood Dormer, whereby many of the said suitors lost the benefit of their proportionable share, to which in justice they were entitled.

ARTICLE XVIII.

That the said Thomas earl of Macclesfield, notwithstanding that he very well knew, and was informed that the Masters of the said Court did, or that it was in their power, from time to time, and at their pleasure to dispose of and employ the money and effects belonging to the suitors of the said Court, which were entrusted with them respectively; and more particularly, that the deficiency appearing in the office of Fleetwood Dormer, esq. one of the Masters of the Court of Chancery, was chiefly occasioned by his, the said Fleetwood Dormer's having taken upon himself unduly to dispose of and employ the money and effects belonging to the suitors of the said Court, which were entrusted in his hands; and notwithstanding that, soon after the said Fleetwood Dormer became insolvent, it was represented and proposed to the said Thomas earl of Macclesfield, then Lord Chancellor of Great Britain, in order to prevent for the future any losses that might happen to the suitors of the said Court, that the several effects and securities belonging to the suitors should be placed out in such manner, as that the power of disposing, employing, or in any manner trading with the same, might be totally taken away from the said Masters, for the effecting of which just design, a particular method was laid before the said Earl; and it was also further proposed, that the said Masters should give some reasonable security to answer the balance of such cash as should, from time to time, be in their hands; and notwithstanding the said Earl was credibly informed, that the sufficiency of some other of the said Masters was very much suspected, yet the said Thomas earl of Macclesfield, whilst he was Lord Chancellor of Great Britain, contrary to the duty of his office, and thereby proposing to make unlawful gain to himself by the disposal and sale of the offices of Masters of the said Court of Chancery; and in order to induce persons to give him, the said Earl, a greater

price or reward for their being admitted to the same, did not require or demand any security whatsoever to be given by any of the said Masters, upon their being admitted to their offices, or at any other time; and the said Earl with the same corrupt view and intention, and to keep up the price of the said offices, totally neglected to enquire into the accounts of the said Masters, and did fraudulently, unjustly, and in breach of the trust reposed in him, permit and encourage the Masters of the said Court, to employ and traffic with large sums of money belonging to the suitors of the said Court, and to make interest thereof for their own unjust gain and profit; and the said Earl, after such proposal made to him, as aforesaid, or at any other time, during his continuance in the said office, did not take any care that the effects of the said suitors should be placed out in such manner, as to prevent the Masters from trafficing therewith, or that the said Masters should give such security as was proposed; by means whereof great deficiencies, to the amount of many thousand pounds, have been, through such default of the said Earl, occasioned in the offices of several other of the Masters, to the great loss and injury of the suitors of the said Court.

ARTICLE XIX.

That whereas his most sacred majesty, out of his fatherly goodness to his people, did, in or about the month of November last, direct an enquiry to be made into the accounts of the Masters of the said Court of Chancery, to the intent that proper methods might be taken for the security of the suitors of the said Court; the said Thomas earl of Macclesfield, being then Lord Chancellor of Great Britain, and one of his majesty's most honourable privy council, in order to obstruct the same, and to prevent a parliamentary enquiry into the state and condition of the offices of the said Masters, in breach of the several great trusts reposed in him, did give advice and encouragement to the said Masters to assist and supply each other with money and effects, and did represent to the said Masters, that it would be for their honour and service, to appear able and sufficient, and that, if they made a bold stand now, it might prevent a parliamentary enquiry, or to that effect; and did persuade several of them to make false representations of their circumstances to his majesty, by adding a subscription to their respective accounts delivered to the said Earl, to be laid before his majesty, to the effect following, (viz.) That they were able to answer the money and securities in their hands, and were willing to pay the same to such persons as were entitled thereunto; although the said Earl knew, or had good reason to believe, that several of the Masters were not then able to answer the balance of their accounts, nor are they yet able to satisfy or make good the same; and when the said Masters were afterwards required to produce the cash and effects of their suitors in their hands, some of the said Masters, according to such advice and encouragement given by the said Earl, did supply others of them with cash and effects, to make a false shew and appearance of their ability and readiness to answer the balance of their accounts.

ARTICLE XX.

That the said Thomas earl of Macclesfield, whilst he continued in the office of Lord Chancellor of Great Britain, in breach of the trust reposed in him, and contrary to the duty of his office, did, at several times, borrow and receive of some of the Masters of the said Court, several great sums of the money belonging to the suitors of the said Court, deposited in the hands of such Masters, and did make use thereof for his own private service and advantage, so long as he had occasion for the same.

ARTICLE XXI.

That the said Thomas earl of Macclesfield, whilst he continued Lord Chancellor of Great Britain, did in an illegal and arbitrary manner, extend the power and authority of Lord Chancellor, and of the Court of Chancery, beyond their lawful and just bounds, and did arbitrarily and illegally assume to himself, as Lord Chancellor, and by colour of office, an unjust and unlimited power of dispensing with, suspending and controuling the statutes of this realm, made for the security and preservation of the estates and properties of the subjects of this kingdom; to the great oppression of the suitors of the said Court, in subversion of the laws and statutes of this realm, in manifest breach and violation of the rights and liberties of his majesty's good subjects, and of his own most solemn oath, as Lord Chancellor of Great Britain; and more especially, when Francis Tyson, esq. deceased, being seized, and possessed of a real estate of the value of 3,000*l.* per annum, or some other great annual value, did, by his last will and testament in writing, duly executed, in or about the month of October, 1717, give and devise all his said real estate to the child his wife was at that time enseint with (if such child should be a son) for his life without impeachment of waste, with remainders to the first, and other sons of the said infant in tail male, and did likewise, by such will, expressly nominate and appoint his said testator's wife, Rachel Tyson, to be the guardian of all his children during their respective minorities, if she should so long continue a widow; and the said Francis Tyson soon after died, leaving one daughter, and the said Rachel, his widow, with child, after whose decree the said Rachel was delivered of such child, being a son, afterwards named Francis John Tyson, in whose right, by virtue of the said will and of the statute made in the 12th year of the reign of king Charles the second, entituled, "An Act for the taking away the court of wards and liveries, and tenures in capite, and by knights service, and purveyance, and for settling a revenue upon his majesty in lieu

thereof;" the said Rachel Tyson did lawfully take into her care and custody her said infant son, and the estate so devised to him, or was willing, and endeavoured so to do, and to undertake the management of his said lands and tenements for his best advantage, and demeaned herself therein, without any misbehaviour; yet the said Thomas earl of Macclesfield, being then Lord Chancellor of Great Britain, under colour of his office and authority, did, by several orders made by him in the months of January and February, in the 5th year of his majesty's reign, or in one of them, illegally and arbitrarily, and in direct contravention of the statute made in that behalf, remove and exclude the said Rachel Tyson, the guardian of the said infant, and also John Nicholas, esq. (a person of good substance and ability, nominated by the said Rachel Tyson, to be receiver of the rents and profits of the said infant's estate, and approved by Robert Holford, esq. one of the Masters of the said Court, and for that purpose, who had given sufficient security for the due execution of his said trust) from the management and receivership of the said infant's estate; and did, by such orders, unduly and injuriously nominate and appoint Robert Doyley, esq. a creature and confidant of his own, and a person altogether unfit and unqualified for so great a trust, to be receiver of the rents and profits of the said infant's estate, and to have a salary for the same, with a power to let such part of the said estate, as was or should become untenanted, with the approbation of the said Robert Holford, although the said Rachel Tyson did expressly object unto, and oppose such appointment of the said Robert Doyley, and did insist to have the benefit and exercise of her right in that respect, as the guardian appointed and entrusted by her late husband; and the said Robert Doyley, after he was so admitted into the said receivership, did for several years receive the rents and profits of the said infant's estate, to the amount of about 10,000*l.* or other great sum, and in his life-time did embezzle and convert to his own use great part thereof; and in or about the month of November, 1722, died insolvent and indebted to the said infant and his estate, in the sum of 2,600*l.* or other great sum, upon the balance of his account, no part whereof hath hitherto been satisfied or paid; and the said Thomas earl of Macclesfield, in further abuse of his power, and in contempt of the laws and statutes of this realm, when upon debate of the matter in the said Court of Chancery, before the said Earl, being then Lord Chancellor, in the month of January or February, in the 5th year of his majesty's reign, or in one of them, it was insisted upon in behalf of the said Rachel Tyson, by her counsel, of great ability and experience in the said Court, that such the proceedings of the said Earl, as Lord Chancellor, were a reviving the power of the Court of Wards, and were not supported or warranted, by any precedent in the Court of Chancery, he the said Thomas earl of Macclesfield, when sitting in the Court as Lord Chancellor, did not only persist in such his appointment of the said Robert Doyley, but did also arbitrarily, and in defiance of the said good and beneficial statute, say and declare, in open Court, that then he would make a precedent in that instance, or he the said Earl, declared and expressed himself to that effect; which actings, proceedings, and declarations of the said Earl, have been and were not only very injurious and prejudicial to the right and interest of the said Rachel Tyson, as guardian, and to the great damage and loss of the infant, Francis John Tyson, and a notorious violation of property, but were also a dangerous exercise of illegal and arbitrary power, to the destruction of the laws and constitution of this realm, in manifest breach of his oath as Lord Chancellor, and in great abuse of his authority.

And the said Knights, Citizens, and Burgesses, by Protestation, saving to themselves the liberty of exhibiting, at any time hereafter, any further Articles, or other Accusation or Impeachment against the said Thomas earl of Macclesfield, and also of replying to his Answers which he shall make unto the said Articles, or any of them, and of offering proof to all and every the aforesaid Articles, and to all and every other Articles, Impeachment, or Accusation, which shall be exhibited by them, as the case shall, according to the course of parliament, require, do pray that the said Thomas earl of Macclesfield may be put to answer the said Crimes and Misdemeanors, and that such proceedings, examinations, trials, and judgments, may be thereupon had and given, as are agreeable to law and justice.

The Answer of Thomas Earl of Macclesfield, to the Articles exhibited by the Knights, Citizens, and Burgesses in Parliament assembled, in the Name of themselves, and of all the Commons of Great Britain, in Maintenance of their Impeachment against him, for High Crimes and Misdemeanors, supposed to have been by him committed.

The said Earl, saving to himself all advantage of exception to the said Articles, and of not being prejudiced by any words or want of form in this his Answer, and also saving to himself all benefit and advantage of the Act for the king's most gracious, general, and free pardon hereinafter mentioned, and all rights and privileges belonging to him as one of the peers of this realm, for answer to the said Articles saith, That he, having for several years executed the office of Chief Justice in the Court of King's-bench, his majesty, of his royal grace and favour was pleased, the 10th day of March, 1715, to advance the said Earl to the dignity of a peer of this realm, and created

him baron of Macclesfield; and, in regard to his circumstances at that time, was further pleased, for the better support of that honour, to grant to the said Earl the pension of 1,200*l.* per annum, in the Articles mentioned, payable at the receipt of the Exchequer; and his majesty was then likewise pleased to declare his royal intention of giving to the said Earl's only son, George Parker, for his life, an office of considerable profit, when a proper opportunity should offer; that in the beginning of May, in the year 1718, he the said Earl, was, by his majesty's great grace and favour, appointed Lord Chancellor of Great Britain, and was sworn before his majesty in council the fourteenth day of that month, when the following oath, being the usual oath of Lord Chancellor, was administered to him, viz.

'You shall swear, that you shall well and truly serve our sovereign lord the king, and his people, in the office of Chancellor of Great Britain; and you shall do right to all manner of people, poor and rich, after the laws and usages of this realm, and truly you shall counsel the king, and his council you shall lain and keep; and you shall not know nor suffer the hurt or disheriting of the king, or that the rights of the crown be decreased by any means, as far forth as you may lett, and if you may not lett it, you shall make it clearly and expressly known to the king, with your true advice and counsel; and that you shall do and purchase the king's profit in all that you may; all which you shall do to the best of your skill and knowledge.

'As God shall help you.'

And the said Earl at the same time took the oaths of allegiance and supremacy, but no oath of office besides that above set forth; and the said Earl doth admit, that, during his continuance in the said office of Lord Chancellor, he did enjoy the usual salary, fees, and profits belonging to such office, which, he says, are of much less annual value than they are generally (as he believes) esteemed to be; and that his majesty was pleased to grant him the salary or allowance of 4,000*l.* per annum, in the Articles mentioned, during such time as he should continue to be Lord Chancellor; but the same is so far from being particular in the case of the said Earl (as the said Articles would insinuate), that it is no other than what hath been for many years past constantly granted to and enjoyed by his predecessors in the said office; and the said Earl doth likewise admit, that his majesty did of his royal grace and bounty, sign a warrant for payment of the sum of 14,000*l.* mentioned in the said Articles, to the said Earl, out of the receipt of the Exchequer, whereof 2,000*l.* was the constant usual allowance from the crown to the Lord Chancellor or Lord Keeper, for and towards the expences in entering upon the said office; and the residue of the said 14,000*l.* over and above the usual fees and deductions upon payment thereof, was his majesty's royal munificence to the said Earl, and the same was received by him accordingly; and the said Earl doth likewise, with the greatest gratitude, own, that about the same time, his said son being then of a proper age, and desirous to go abroad, to travel, his majesty was pleased to grant to the said George Parker the yearly pension of 1,200*l.* payable out of the receipt of the Exchequer, during the joint lives of his majesty and the said George Parker, determinable upon his majesty's granting to him, the said George Parker, in possession or reversion, the office of one of the tellers of the Exchequer, for life, and his coming into the actual possession thereof, and which the said Earl likewise admits has been since granted to his said son, and that he came into the actual possession thereof in or about July, 1719, whereby the said yearly pension is determined; and the said Earl saith, that during his continuance in the said office of Lord Chancellor, or at any other time, he never once had a design, or view, or wish to raise to himself any exorbitant gain or profit, much less used, or ever thought of using any unjust or oppressive methods to extort or obtain any sum whatsoever, as in the said Articles is suggested, but such views and practices are inconsistent with the whole tenor of his life and actions; and in case it shall be thought proper for the said Earl to lay before your lordships an account of his estate and fortune, and of the considerable sums of money he has distributed for the relief and support of others, it will appear that he is not such a designing, avaricious, and oppressive man, as in the said Articles he is represented; and the said Earl humbly hopes, that he shall be allowed, in this his Answer, to distinguish between acts themselves, and the inferences drawn from them by the said Articles; and that, whenever he admits any fact, he may not be understood to admit that such fact was by him done or committed upon such motives, and with such designs, or in such manner, as is suggested in the said Articles; and with this reservation he answereth, as followeth: By way of general Answer to such of the said Articles, as relate to the making any present by persons admitted to the office of Masters in Chancery; the said Earl doth say, that the same has been long used and practised in the time of his predecessors in the said office, and that such presents have been reckoned amongst the ancient and known perquisites of the great seal, and the making and accepting thereof has been notorious to all the world, and never before looked upon to be criminal, or complained of as such; and the said Earl humbly hopes, that the giving or receiving of a present on such occasion is not criminal in itself, or by the common law of this realm, and that there is not any act of parliament whatsoever, by which the same is made criminal, or subject to any punishment or judgment, which can be prayed in this prosecution; and the said Earl thinks himself obliged humbly to lay this before your lordships, not only in his own defence, but in vindication of the honour of so many great and

excellent men, who have been his predecessors in the said office, and have all along done the same, for which the said Earl is now complained of, and of others having been Lords Chief Justices of the King's-bench and Common Pleas, Masters of the Rolls and other Judges, who have likewise received presents in money, upon the admission of the several and respective officers under them, in several courts of justice, and who, the said Earl is assured, never apprehended themselves to be guilty of any crime against any the good and wholesome laws or statutes of this realm.

I. &c. To the First, Second, Third, Fourth, Fifth, Sixth, and Seventh Articles, the said Earl further saith, That long before the 24th of July, 1721, he did admit and swear Richard Godfrey, James Lightboun, John Borret, and Edward Conway, esquires, into the offices of Masters of the Court of Chancery, and every one of them did freely and voluntarily, and of their own accord, as former Masters had done to the predecessors of the said Earl, send to the said Earl a present upon occasion of their respective admittances, which the said Earl accepted; and that after the said 24th of July, 1721, he did admit and swear William Kynaston, Thomas Bennet, and Francis Elde into the offices of Masters of the Court of Chancery; and saith, that every of the said persons last named, did freely and voluntarily, and of their own accord, in like manner, send a present to the said Earl upon occasion of their respective admittances; but saith, That, it being pretended by the said Kynaston and Bennet, that they were by such presents disabled from answering so much of the money due from them to the suitors of the Court, he the said Earl did afterwards, and before the impeachment, deliver the present so sent him by the said William Kynaston, being 1,575*l.*; and also the present so sent him by the said Thomas Bennet, being the like sum of 1,575*l.* into the Court of Chancery, in open Court, to be applied for the benefit of the suitors, as the Court should direct, and that the said Earl retained of the present so sent him by the said Francis Elde, no more than the sum of 1,850*l.*

VIII. To the Eighth Article the said Earl further saith, that in July last the office of one of the Masters of the said Court became vacant by the death of John Borret, esq. who died intestate, but whether solvent or not, he cannot say; but upon notice of his death, the said Earl did at first desire Richard Godfrey, esq. one of the Masters of the said Court, who had been very well acquainted with the said Mr. Borret, and his affairs, and afterwards the said Mr. Godfrey and John Bennet, esq., another of the Masters of the said Court, to enquire into his effects, and to take what care they could about the same; who, after some enquiry, informed the said Earl, that they believed there would be no deficiency; and secured a considerable part of the effects of the said Mr. Borret, and entered a proper caveat in the Prerogative Court, to prevent administration being granted to any persons who might embezzle the said Borret's estate; and afterwards, at the request of the said Earl, proceeded so far, as to obtain a sentence in the said Prerogative Court, for administration to be granted for the benefit of the suitors of the Court, to them, the said Mr. Bennet and Mr. Godfrey, which was afterwards, upon their waving thereof, granted to Mr. Paxton, as the said Earl believes; but the said Earl thought it proper and necessary to admit another Master in his place, to carry on the business of the Court, and to be entitled to demand the effects of the suitors from the representative of the said Mr. Borret, when one should be appointed; and therefore, about the 5th day of August last, did admit and swear Mark Thurston, esq. into the said office, vacant by the death of the said Borret, and the said Earl admits the said Mark Thurston did upon that occasion freely and voluntarily, and of his own accord, send a present, whereof 2,000*l.* and no more, were retained.

IX. In answer to the Ninth Article the said Earl saith, That he believes Thomas Bennet, esq. in this Article named, was possessed of the office of Clerk of the Custodies, in the Article described, and that such office is in the gift and disposal of the crown, by grant under the great seal; but denies that he did at any time insist upon the sum of 105*l.* or any other sum of money, to permit or accept of the resignation of the said Thomas Bennet, or did refuse to permit or accept thereof until the said Thomas Bennet had agreed to pay the same, or any other sum on that account; but saith, that although the said office be usually granted by the crown, yet it has always been looked upon to be the right of the Lord Chancellors, or Lord Keepers, to recommend to that, and other offices under the great seal, and to approve and allow of the deputies, to execute the same; and, upon such recommendations and approving of deputies, have accepted presents, and looked upon the same as their right; and further saith, that there have been two of such offices granted in his time, one of which appearing to him to be a case wherein the party had suffered great hardship, the said Earl passed the same without any present whatsoever, though the office be of considerable value; the other was the case of Mr. Hamersley, in the Articles mentioned, in which the said Earl owns he did accept a present.

X. In Answer to the Tenth Article the said Earl saith, The same is conceived in such general terms, that it is not to be expected he should give any particular answer thereto; however, he saith, That during the whole time of his being Lord Chancellor, he never once took any money, present or gratuity whatsoever, for or upon account of the naming, making, or admitting any officer whatsoever, other than before particularly named, except in the cursitor's office, where he owns he has done, as was done by all his predecessors before him.

XI. In Answer to the Eleventh Article the said Earl saith, That the same not containing

any particular charge, he apprehends himself not obliged to give any particular answer thereto; but however, in general, does say, That he never did admit any person into the office of a Master of the Court of Chancery, but who was either known to be of substance and ability, and fit to be trusted in such office, or, upon a proper enquiry, very well recommended to him as such; and, whenever there have been several candidates, the said Earl has constantly given the preference to him that he thought would best discharge the office, and most for the honour of the Court, and the advantage of the suitors; and believes that he may, upon some occasions, have declared, that he thought the then body of Masters as good, with respect both to their estates, and ability for discharge of the office, and their integrity, as had been at any time before, or to that effect; and what he did say to that purpose, he thought to be really true.

XII. To the Twelfth Article the said Earl saith, That if there was any such practice as is mentioned in the Article, of paying for the places of the Masters out of the money and effects belonging to the suitors of the Court, he was totally ignorant of it; but admits, that he did not, nor did any of his predecessors, that ever he heard or believes, give any particular directions for schedules to be made of the money and effects of the suitors of the Court to be delivered over to the succeeding Masters; but believes, that in virtue of the general order of transfer made of course upon every admittance, such schedules were made between the new Masters and their predecessors, or the representatives of their predecessors; and if the ill consequences, in the Articles alleged, had followed from such practice, or the not ordering such schedule, which he does not admit, he insists that the same could not render him criminal.

XIII. In Answer to the Thirteenth Article the said Earl saith, That after Christmas, in the year 1720, he was informed, that the said Fleetwood Dormer had withdrawn himself to Holland, where he then was, and thereupon the said Earl used all the properest methods he could for securing his effects, and particularly directed Mr. Hicoocks and Mr. Rogers, the then two senior Masters of the Court, to make an enquiry into his affairs and accounts, and to consider what would be most proper to be done; and the said Earl believes, that the said two Masters, in pursuance of the directions from the said Earl, did search the chambers of the said Fleetwood Dormer, in Lincoln's-inn, to see what books, accounts, or effects could there be met with, but found no account whatsoever, nor any effects of value, and did put a stop to the transferring of the stock, then in the name of the said Fleetwood Dormer, in any of the public companies; and the said Fleetwood Dormer's person being thus out of reach, and his accounts and effects wholly unknown, except the stock, which could not be disposed of without his concurrence, a proposal was some time after made to the said Earl, that the said Fleetwood Dormer might have a promise of his liberty from the said Earl, and upon that condition he would come over, and assign all his effects, and assist in getting them in, and settling and adjusting his accounts; and the said Earl, seeing no other way open to get any thing for the suitors, and being made to believe that if any deficiency should happen, the same would be made up by the other Masters, did agree, that in case the said Fleetwood Dormer would come over, and make a full discovery of all his effects, and assign the same for the benefit of the suitors, he, the said Earl, would allow him his liberty on that condition, and not otherwise; and the said Earl was soon after informed, that the said Fleetwood Dormer submitted to those terms, and would very soon come over, and discover and deliver up his effects; and the said Earl did not doubt, but the whole debt upon the said Fleetwood Dormer would be paid. And the said Earl saith, That he does not remember that any application was ever made to him, by the said Masters of the said Court, for any assistance of the Court, touching the person or effects of the said Fleetwood Dormer, but what he granted, so far as he thought it tended to the benefit of the suitors, and believes that no application was ever made to him by the suitors, or any of them, or any other to secure the person of the said Fleetwood Dormer, or for compelling him to make satisfaction to the suitors; and the said Earl saith, that he never endeavoured to conceal the true state and condition of the said office from the suitors of the Court, nor did any of them apply, till very lately, to the said Earl to look into the same; and further saith, that he remembers nothing of his ever using any such expression, as is charged in the said Article, at any time before or after he knew that the said Fleetwood Dormer absconded.

XIV. To the Fourteenth Article the Earl saith, That Henry Edwards, esq. in this Article mentioned, succeeded to the office of Mr. Dormer, about the 18th day of May, 1721; but, by reason of the disorder the said office was then under, and the great danger of a loss therein, the Earl had given up and quitted all the advantage which might accrue to him upon the disposal thereof, and left it entirely to the other Masters to raise what money they could thereby, which was agreed to be all applied towards making good any deficiency or loss which might happen to the suitors of the Court concerned in that office; and thereupon the sum of 5,000*l.* was raised, by the disposal of the said office to Mr. Edwards, and was applied accordingly; and the said Earl believes the debt from William Wilson, in this Article mentioned, was assigned by the said Mr. Dormer to the said Mr. Edwards in trust, and to the intent, that he should pay, apply, and dispose of the said debt, or such part thereof, as should be, from time to time, by him got in, and received of and from the said William Wilson, in such manner as the Court should order and direct, or to that

effect: after which said assignment so made, the Earl believes that the said Mr. Edwards used great endeavours to obtain payment and satisfaction of the said debt from Mr. Wilson; but finding all his endeavours fruitless, and that the said Wilson had long before stopt payment, and was in no condition of paying his creditors the whole of their debts, but that he was willing, and had offered to come to a composition, and to pay them in proportion the utmost he was able; the said Mr. Edwards thereupon, about the 30th day of June, in the year of our Lord 1722, preferred his petition to the said Earl, as Lord Chancellor, setting forth in substance the state of the case, as before-mentioned, and praying that it might be referred to one of the Masters of the Court, to see if such composition, so proposed by the said William Wilson, were for the benefit of the persons entitled to receive the same; and the same was accordingly, by order of the said Earl, referred to Mr. Hiccocks, the then senior Master of the Court, to enquire into, and make his report therein; and about the 26th day of July, then next following, the said Mr. Hiccocks made his report, that the said William Wilson had, under his hand in writing, proposed to assign over to the said Mr. Edwards, as a composition for, and in full discharge of, the sum of 24,046*l.* 4*s.* therein mentioned to be due and owing from him to the said Mr. Edwards, as assignee of the said Mr. Dormer, the sum of 10,000*l.* part of a large sum due to the said William Wilson, from Edward Poulter of Hackney, gentleman, in this Article mentioned, and to pay the said Mr. Edwards in specie, the sum of 1,463*l.* 2*s.* 1*d.* over and above the sum of 560*l.* then already paid to the said Mr. Dormer, in part of the said composition; and that upon consideration had of the circumstances of the said William Wilson, and the said several matters, he was of opinion, that the accepting the said composition would be for the benefit of the person or persons entitled to receive the same; upon which said report the said Mr. Edwards, about the 3rd of August then next, preferred another petition to the said Earl, with the said report annexed, and thereby expressly prayed the said Earl to order him, the said Mr. Edwards, to accept of the said composition, whereupon the said Earl, in a proper and usual manner, ordered the same as prayed; and the said Earl saith, That he was informed, and believes, that the said composition was made and agreed to, upon a consultation of all or most of the Masters of the said Court, who, the said Earl did believe, would use their best endeavours to get as much as they could; and the said Earl saith, he hath heard, and believes it to be true, that besides the 1,463*l.* 2*s.* 1*d.* then paid down, there hath been since got in by Mr. Edwards, on account of the said debt from Edward Poulter, the sum of 1,000*l.* or thereabouts; and that at the time of the said assignment, the said debt, claimed by Wilson from Poulter, was a just debt; and judgment at law has been since obtained for 18,000*l.*, part thereof; and the said Poulter was looked upon to be a substantial person, though, to avoid payment of the said Wilson's debt, which arose on account of their dealings in South-Sea stock, and subscriptions in the year 1720, the said Poulter not only brought his Bill in Chancery, but, after the same was dismissed, and that he was taken in execution at Wilson's suit at common law, he found means to make his escape out of the custody of the marshal of the Court of King's-bench, and to get over to France or Holland, where he still continues, as the Earl is informed; but he is likewise informed, that, after the said escape, a commission of bankruptcy was taken out against him by the said Wilson, upon which some effects were recovered, and likewise an action at law brought, and a verdict and judgment for 18,000*l.* and upwards obtained by the said William Wilson against the marshal, on account of the said escape; and saith, he hath likewise been informed, that the said Edward Poulter and the marshal have each of them offered considerable sums of money by way of composition for the said debt; but the said Wilson, from a persuasion of the abilities of the said Edward Poulter to pay the whole, did at first refuse any composition with the said Poulter, and since hath been afraid to make any composition, either with Poulter or the marshal; and what may be the consequence thereof, with regard to the suitors of the Court, or what further sums of money may be recovered upon account of the said debt, towards making them satisfaction, the Earl saith, he cannot with any certainty take upon him to answer.

XV. To the Fifteenth Article the Earl saith, That about the month of February, in the year of our Lord 1720, he gave orders to his secretary to write to the several Masters of the Court of Chancery, to bring in their accounts of the cash, effects, and securities in their hands, belonging to the suitors of the Court, and believes he did so; but denies that the same was done with any unjust purpose, or with any thought to terrify the said Masters to make any contribution, towards satisfying the demands upon the said office of Fleetwood Dormer, but believes what they did contribute, they paid freely and voluntarily, and out of their own money, and therein, as the said Earl believes, did no more than follow a precedent of the like nature, on the failure of Dr. Eddisbury, formerly a Master of the said Court; and the said Earl saith, that his real and whole intention in calling for the said accounts, was to inform himself, in the best manner he was able, of the state and condition of the several offices, and thereby to be the better able to make proper regulations concerning the same; and therefore, though the said Article seems to insinuate, as if the calling for the said accounts was dropped, as soon as the Masters were prevailed on to contribute, the said Earl saith, that afterwards, and without any regard thereto, he still continued to call for the said Masters' accounts; and not finding them brought in, as he expected, he did, about the beginning of November following, cause

another letter to be sent to them, requiring them to bring in their accounts: and, by both the letters sent to them on that occasion, he directed the particular method in which he would have their accounts made up; but the said Earl, being afterwards convinced how difficult and tedious a work it would be, and what obstruction it would give to the business of the Court, and that at last it could not be depended upon with any certainty, was forced to lay aside that design, and to content himself with going on in the same road which his predecessors had done; and humbly begs leave to observe, that what has been lately done, with respect to the accounts of the said Masters, plainly shews the insuperable difficulties of such an undertaking.

XVI. To the Sixteenth Article the Earl saith, That he believes that, on or about the 17th of March, 1723, such order was made, as in the said Article is mentioned, for Henry Edwards, esq. to pay Elizabeth Chitty 1,000*l.* part of the money brought before Mr. Dormer, but does not remember that the said Henry Edwards made any complaint thereof to the said Earl, but believes Mr. Edwards, not having then sufficient effects of Mr. Dormer's in his hands, refused payment thereof; and that in July following, Mr. Lochman, in the Articles named, applied himself to the said Earl several times, and in a very earnest manner, to help the said Mrs. Chitty to the said 1,000*l.*, alleging that he, the said Mr. Lochman, was to marry her, and that he had made a composition with his creditors, upon which 1,000*l.* was to be paid in a very short time, which he then mentioned; and that he, the said Mr. Lochman, was to have the said 1,000*l.* for that purpose; and that, if he had it not by the time, the composition would be void, and he should be utterly ruined; and at length the said Earl, being greatly moved by the pressing importunities of the said Mr. Lochman, and by compassion for the very great distress in which he then appeared to be, did promise to supply him with the said 1,000*l.* out of his own pocket; and accordingly directed Mr. Cottingham, then his secretary, to pay it, taking from the said Mrs. Chitty an assignment of the benefit of the said order, and believes the same was done accordingly: and that, upon Mr. Lochman's pressing for a farther sum for the said Mrs. Chitty, for her own use, the said Earl might tell him, that the said 1,000*l.* was all that he must expect from the said Earl; and the said Earl does not believe that he had any discourse with the said Masters, to persuade them to pay the said 1,000*l.* to Mr. Lochman.

And as to the last branch of the said Article, the said Earl saith, That the fact was, that one Jackman having, in the cause in the Article mentioned, been confirmed the best purchaser of part of the estate of T. Harper at the price of 260*l.* so long ago as the 19th of December, 1717, and it being at the same time ordered, that the writings belonging to such estate, should be delivered to his counsel, and that the tenants should attorn to him, on his bringing his purchase money before Mr. Dormer, then one of the Masters, and the said money having been brought before the said Master the 24th of December, 1717, and the tenants having attorned to Jackman; but the conveyances not being then executed, though long before approved, a motion was made in the Court of Chancery before the said Earl, on the 5th day of December last, that all parties might execute the conveyances, and the 260*l.* be paid to the plaintiff, towards satisfaction of a demand she had out of the estate of the said Harper; and those that were to have the residuum of the said T. Harper's estate, insisted, that they were always ready to join in the conveyances, if the purchase money were applied to discharge the rest of the estate, that they were apprehensive of a deficiency of Mr. Dormer's estate, and therefore neither they nor the plaintiff ought to be sufferers by such deficiency, the delay having been occasioned by the purchaser, and not by the plaintiff, and therefore scrupled executing the deeds, unless upon payment of the money to the plaintiff, and discharging the rest of the estate therefrom; and this being the first time that any question relating to Mr. Dormer's deficiency had been laid before the Court, by any of the suitors, the said Earl took notice of its being so, and believes he might express himself to this effect, That he had indeed heard of the said Dormer's deficiency, but that it had never yet come judicially before him, upon complaint of any of the suitors of the Court; and further declared, that if there should be any deficiency in his office, several circumstances had concurred thereto, as Wilson the banker's stopping payment, greatly indebted to him, Poulter's going away in Wilson's debt 18,000*l.* and upwards, after a verdict and judgment at law, and Poulter in actual execution for it; and that, as he had heard, Wilson had then lately brought an action of escape against the marshal, and recovered a verdict against him for the like sum; and how all these matters would at last come out, the said Earl said he did not know, or he expressed himself to that effect, and no other; and thereupon ordered, that it should be referred to Mr. Edwards, to examine whether the said 260*l.* was deposited with Mr. Dormer for the benefit of any particular person, and whom, and what was the occasion of the delay, that the said conveyances were not executed, and the said 260*l.* purchase money, paid out before the year 1720; and whether there was likely to be a loss of any money deposited with the said Mr. Dormer, and that upon the Master's report such further order should be made, as should be just; and the said Earl hopes the said order was very proper and necessary, and takes the liberty of representing to your lordships, that this was after the accounts of the Masters had been laid by the said Earl before the lords of the council, and had been for some time under the consideration of the judges and others, appointed by his majesty to inspect the same.

XVII. To the Seventeenth Article the Earl saith, That he never endeavoured to conceal the deficiency occasioned by Mr. Dormer's failure, but as the said Earl was under a full persuasion, that the same would all in due time be made good, and as Mr. Dormer's effects were coming in by degrees, and no application was made to him by any of the persons concerned, to put a stop to, or any restraint upon, the payments, he did not think it incumbent upon him, *ex officio*, to make a declaration of an average. And the said Earl saith, that he does not know that any order was made by him for Mr. Edwards to pay any money that had been lodged with Mr. Dormer, except the order aforementioned, in the case of Chitty, but believes several orders have been made by the Court for that purpose, and that the said Mr. Edwards, under a firm persuasion that the whole deficiency would be made good, paid out the whole sums so ordered, so far as the money then in his hands would extend.

XVIII. To the Eighteenth Article the said Earl saith, he never knew how the Masters kept or disposed of the money and effects belonging to the suitors of the Court; and as he believes, that after Dr. Eddisbury's failure, the then Lord Chancellor, so he knows that after Mr. Dormer's misfortune, the Earl thought of several methods to prevent any inconvenience upon the like accident for the future; but they had both the same misfortune, not to bring any of them to such perfection, as to venture to put them in practice.

That several proposals were made to him by the persons he consulted upon that occasion, but none that he believes, it will be held criminal not to have then established; some things were proposed that he thought impracticable, some insufficient, some inconsistent with that complete regulation he hoped to make; the objects he proposed to himself, were to provide for whatever deficiency might happen in the office, late Mr. Dormer's, to secure the suitors from any future loss, and to make several regulations relating to the offices of the Masters, and he thought these would be best done together, nor had he perfected the scheme of any one of them to his own satisfaction; he remembers no proposal that he thought would take it totally out of the power of the Masters, to dispose of the securities or effects, or effectually secure the cash. The said Earl admits, that he did not demand any security to be given by any of the said Masters at the time of their admittance, because it had not been done by his predecessors, who were much wiser men than himself, nor was he so much as asked by any of the parties interested so to do; as to what the said Earl did with relation to the accounts of the said Masters, he hath already set forth, and saith, that he gave no permission nor encouragement to the Masters of the Court, to employ or traffic with the suitors' money for their own gain or profit; he owns, that with respect to the securities in the hands of the Masters, he made no general order, and thinks it the less material, because, notwithstanding what is alleged in the close of this Article, he believes all the present Masters did, in December last, produce all the securities in their hands, and the Court of Chancery hath since secured the same for the benefit of the suitors.

XIX. To the Nineteenth Article the said Earl saith, That upon great consideration of Mr. Dormer's deficiency, and of the danger there might be of further inconveniences, with relation to the money and effects in the hands of the Masters, and of several disputes and differences that had arisen in the Court of Chancery, and of some applications of the said Masters, for establishing them in their just rights, and of some practices of the Masters, which the said Earl thought ought to be reformed; he was convinced, that the same was a work of too great consequence for him singly to attempt, and being highly sensible of his most sacred majesty's paternal goodness to his people, did presume humbly to beseech his majesty, as the fountain of justice, to deputte some of his most honourable privy council, to take the matters aforesaid into consideration, in order to the establishing such regulations, as might tend to the honour of that high Court, and to the advantage of his majesty's subjects being suitors there: which request, his majesty, out of his wonted goodness, was pleased to receive very graciously, and named several lords, and other honourable persons of his privy council, to be a committee, to take the same into consideration; and pursuant to his majesty's command, the said committee met, and began with the accounts of the said Masters, wherein the said Earl begs leave to appeal to such of your lordships, who attended in that committee, whether he did not contribute, to the utmost of his power, to have every thing done which the said committee thought expedient: and the said Earl saith, that he made all such orders as were by them judged requisite, and so pressed the execution thereof, that not only the accounts of all the Masters then in being were brought in, but all the securities in all their hands, and the cash of most of them were actually lodged in the Bank of England, and therefore the said Earl is greatly surprised, to find himself charged with obstructing the taking those accounts, which he had thus desired might be taken, and contributed to the taking of them with all his power. And the said Earl saith, that he never thought of preventing a parliamentary enquiry, any otherwise, than by making it unnecessary, and procuring to the suitors a full redress of all their grievances, and rectifying whatever he found amiss, and that he looked upon to be his duty, and begs leave to say it here once for all, in answer to all the several insinuations of that kind contained in the Articles.

And the said Earl further saith, That while the said accounts were taking, every one of the said Masters declared, over and over, that they had effects sufficient to answer their whole accounts, and the said Earl firmly believed

the same to be true, and as all of them, that he saw (which he believes were all, or at least all but Mr. Kynaston) had told the said Earl, that they were able to answer their accounts; and when they brought their accounts to the said Earl, for him to lay before the said committee, Mr. Holford had wrote under his account some declaration to that effect, and some others of them, as he remembers, had made use of some other expressions, which he thought not so proper; and some, as he believes, had wrote nothing (but he cannot distinguish the persons) and the said Earl thinking, that when the said accounts came to be laid before the committee of council by him, it would be proper that the same thing should be declared to the committee, which had been said to him singly, he advised them all to write the same words under their accounts, and did tell them, in great sincerity and friendship, that at a time when so many men's mouths were open against them as insolvent, it would be for their honour and interest to make it appear that they were able and sufficient, as he then believed them to be, but never thought of a contrivance to have them deceitfully appear, or seem what they really were not; and he says they did then withdraw to make the subscription, or at least so many of them whose accounts were then ready; and soon after delivered them to the said Earl, who carried them with him to the committee of council, whither he was then going, without looking upon them; but upon reading them at the council, it was observed that they had not all used the same words, having varied considerably, but what any of the subscriptions were, he cannot take upon him to set forth.

And the said Earl further saith, That a subsequent order being made by the said Earl, for the said Masters to produce their securities, and their cash, before the persons appointed to inspect their accounts, they made great complaint, that so many hundred thousand pounds should be required at so short a warning, and some of them saying, that though they had effects sufficient, and could raise the whole if they had a little time, desired the said Earl to allow them further time for that purpose; but the said Earl saith, that he required them to bestir themselves, and raise it immediately, telling them, that since they had effects to give security, they might find friends to furnish the money; and believes he did say, that some of their own brethren might perhaps be able to let them have money till they could raise it another way.

But if any of them did supply others with cash or effects to produce, only to make a false shew and appearance of their ability, and readiness to answer the balance of their accounts, the said Earl knows nothing of it, and is sure they had not the least encouragement from him so to do.

XX. To the Twentieth Article the said Earl saith, That it never entered into his thoughts, to make use of, nor did he ever make use of any of the money belonging to the suitors of the Court for his own private advantage; but believes, that in December 1720, having occasion for the sum of 1,500*l.* and asking his secretary, Mr. Cottingham, whether he could lend him the same, he said he could not, but would procure it for him; and accordingly, borrowed the same from Mr. Godfrey, one of the Masters of the said Court, and the said Earl gave his own note for payment thereof to the said Mr. Godfrey, and in February following repaid 1,000*l.* part of the said principal sum; but in the same month of February, 1720, upon a fresh occasion, borrowed again part of the said 1,000*l.* so paid back, and a note or notes were given for the payment thereof; and some time after the Earl ordered the whole money borrowed of the said Mr. Godfrey to be paid, with all the interest due for the same; and the said Godfrey received the principal, but would not be prevailed upon to take the interest, or any part thereof: and the said Earl saith, that all the said money was repaid within the compass of a year after it was borrowed; and the said Earl declares, that he never received or borrowed any sums of money whatsoever of any of the Masters of the said Court, except as above set forth.

XXI. To the one-and-twentieth Article the said Earl saith, That upon the strictest review of his own behaviour, during the time he had the honour of serving his most sacred majesty in the office of Lord Chancellor, he is not conscious to himself that he ever did, in any illegal or arbitrary manner, extend his power, or the power of the Court, beyond their lawful and just bounds, or that he did arbitrarily or illegally assume to himself, as Lord Chancellor, or by colour of his office, any unjust and unlimited power of dispensing with, suspending, or controuling the laws or statutes of this realm, or that he any ways oppressed the suitors of the Court, or was guilty of any breach or violation of the rights or liberties of the subject, or of his own oath, as Lord Chancellor: and with regard to the particular complaint against him in this Article, the said Earl saith, That Rachel Tyson, in the Article named, as the Earl is informed, caused a Bill to be exhibited in the Court of Chancery, in the name of her son and daughter, in the said Article likewise mentioned, by their *prochien amy*, against herself, and the said John Tyson and others, to have the trusts in the will of her late husband duly performed; and the same was brought to hearing at the Rolls the 7th day of July, 1718, and by the decree then made, it was amongst other things ordered, upon the prayer (as the said Earl hath heard and believes) of the counsel employed by the said Rachel Tyson, that a receiver should be appointed of the rents and profits of the real estate, who was to have a salary allowed him, and power to let and set the said estate, as there should be occasion, with the approbation of the Master, to whom the cause was referred: and the said Earl saith, that in execution of

that part of the decree, which directed a receiver to be appointed, the Master having certified, that he had appointed John Nicholas, esq. to be the receiver of the rents and profits of the said estate, the said John Tyson, thinking himself aggrieved thereby, did, in the usual course of proceedings in the said Court, cause exceptions to be filed against the same, and upon the arguing thereof before the said Earl, by counsel of both sides, affidavits were read, to shew that the said John Nicholas was an improper person; that the said testator had declared in his life-time, that the said John Nicholas by name should not have any thing to do with the management of his estate; and that a considerable part thereof consisted in old houses and water-works: and the said Earl, upon a full hearing of both parties, was of opinion, that the said John Nicholas ought not to be appointed the receiver; and upon the proposal of the said John Tyson, then in Court, ordered Robert Doyley, esq. to be receiver, he giving security to be approved of by the said Master; which order was made, as he believes, on the 15th of January, in the year 1718; and affirmed upon the re-arguing the said exceptions on the 6th of March, in the year 1718; since which time the parties interested have never thought fit to complain thereof to your lordships by appeal, in order to have it reversed, as mistaken or unjust, though now the making thereof is complained of as a crime; and the said Earl is not ashamed to own, that he was very well acquainted with the said Robert Doyley for some years before the said order, and believed him to be a person of great honour and integrity, application and exactness, and believes there are several persons of distinction to whom he had the honour to be known, who had the same opinion of him; but the said Earl did not appoint him receiver because of his own respect for him, but because he was named by the said John Tyson, who was uncle of the said infant, and executor of his father's will in trust for him, and by the same will appointed his guardian in case of his mother's death or marriage, and to whom the said testator had devised the said estate, in case of the death of the said infant without issue male, and whose interest it therefore was to take care of the infant's interest in that particular; and the said John Tyson and sir Cæsar Child (whose daughter the said John Tyson had married) had such confidence in him, the said Robert Doyley, that upon the 18th day of March, 1718, they entered into a recognizance, together with him, in the penalty of 7,000*l.* for the said Robert Doyley's duly accounting for, and paying the money he should receive out of the said infant's estate; and the said Earl saith, that no complaint was ever made to the said Earl against the said Robert Doyley to the time of his death; but he owns that he hath heard, that upon the Master's stating the accounts since Christmas last, there does appear due from the said Robert Doyley about two thousand and five or six hundred pounds; but believes there is not any fear or doubt but that the same is very well secured by the said recognizance.

And the said Earl saith, That he does not remember the particular expressions used by the counsel or himself, upon arguing or re-arguing the said exceptions, but he cannot believe that any counsel, of great ability and experience in the said Court, would have thought what the said Earl did extraordinary, much less would have used such an expression to the said Earl as in the Articles, which is an indecent censure of his proceedings; and here being a decree in this case, approved of by all parties, that a receiver should be appointed to receive the rents and profits of the infant's estate, the said Earl is at a loss to understand, how the fixing on the person to be the receiver, upon good security, to account for and pay the same for the infant's use, is reviving the Court of Wards, whose business it was to take the rents and profits of the infant's estate for the king's use, without accounting for any of them to the infant, but barely providing a maintenance for him, at the discretion, perhaps, of some grantee of the custody.

Thus the said Earl has laid his case before your lordships, and doth further, for answer to all the said Articles, say, That he is not guilty of all or any of the matters contained in the said Articles, or any of them, in manner and form as they are therein charged against him; and the said Earl doth further insist upon the benefit of his majesty's most gracious and general free pardon, granted to all his subjects (not therein excepted), in and by an act of parliament for that purpose made in the 7th year of his majesty's reign, in bar of, and in his defence against the said impeachment, and the said Articles exhibited in maintenance thereof, and all and every the proceedings thereupon, so far as the same extend to any neglect, offence, or misdemeanor, or supposed neglect, offence, or misdemeanor, or any other act, matter, or thing, suffered, done, or committed, or omitted by him the said Earl, before the 24th day of July, in the year 1721, and doth humbly insist, that no evidence ought to be given against him for or concerning any of the matters or things aforesaid, in and by the said Act pardoned, or any of them; and doth aver, that he is not within any of the exceptions in the said Act contained. MACCLESFIELD.

THE COMMONS REPLICATION TO THE ANSWER OF THOMAS EARL OF MACCLESFIELD.

The Commons have considered the Answer of Thomas earl of Macclesfield, to the Articles exhibited against him by the knights, citizens, and burgesses in parliament assembled, and observe, that the said Earl hath industriously avoided giving a direct and particular Answer to several matters positively and certainly alleged against him in the said Articles, which

from the nature of the facts themselves, must necessarily lie in his own knowledge, and hath attempted to disguise and cover the real crimes laid to his charge, by immaterial and evasive insinuations of facts of a different nature; and that many parts of the said Answer are contradictory to, and inconsistent with each other, upon which they might demand your lordships' immediate judgment: yet the Commons being able to maintain the truth and justice of their accusation, are willing to enter into the due examination thereof: and do aver their Charge of High Crimes and Misdemeanors against the said Thomas earl of Macclesfield to be true, and that the said Earl is guilty in such manner as he stands impeached; and that the Commons will be ready to prove their Charge against him, at such convenient time as shall be appointed for that purpose.

L. C. J. *King.* Gentlemen of the House of Commons, you may proceed as you please.

Sir *G. Oxenden.* My lords, the Commons of Great Britain in parliament assembled, have out of their indispensable duty to his sacred majesty, and zeal for the security of the estates and properties of their fellow subjects, exhibited a Charge of High Crimes and Misdemeanours against the earl of Macclesfield, late Lord Chancellor of Great Britain, complaining of many dangerous and corrupt practices, many grievous and heinous offences committed against the good and wholesome laws and statutes of this realm.

The first and principal accusation of the Commons is, That the Earl at the bar, whilst he continued in the office of Chancellor, did illegally and corruptly insist upon, and take of divers persons, several great and exorbitant sums of money, in order to, and before their admission into their offices of Masters in Chancery; and that those offices concern the administration of justice in that Court.

This, my lords, is a charge of the deepest dye; the crime alleged strikes at the very root of government itself; it is the essence and stability of society, that justice should be administered with clearness and impartiality, that the people may sit easy under the wings and protection of the laws, and their properties be guarded from unjust invasions. In the progress of the Charge, your lordships will observe, that almost all the other crimes and misdemeanours, of which this noble person stands accused, are subservient to this chief design of amassing together vast and immense sums of money, and that they have a tendency to advance the price of these offices: whether they be acts of unjust oppression; of wilful neglect; or of partial and unequal administration of justice; whether they be acts of open violation of duty, or of secret and private intrigue to elude the public justice of the kingdom, your lordships will find these arrows drawn all from the same quiver, dipt in the same deadly poison, and directed to the same mark.

In order to set this in the clearest light, I must go on and observe, That the Commons charge in the next place, that insufficient persons were found out and pitched upon to be admitted Masters of the Court; men of small substance and ability, no ways fit to be entrusted with the great sums of money and effects lodged in their respective hands.

My lords, the natural qualities and endowments requisite to recommend men to so great a trust, ought to have been honesty and probity; the acquired ones, those of knowledge and experience; without a due mixture of these, it was very hazardous to admit any into trust: but no doubt credit and competency of fortune were ingredients perfectly necessary; because whatever loss or misfortune might attend the management of a Master so accomplished, in the ordering the suitors' money, here might be some provision coming out of his estate to make reparation. Your lordships will, no question, at the first view, think it carries an odd appearance, when this unfortunate Earl had resolved within himself, at all hazards, to raise exorbitant and immense treasures out of the sale and disposal of the Masters' places, how it should answer his corrupt designs to admit into them persons of small substance, and some of almost desperate fortunes, utterly unable to lay down the vast prices those offices were sold for at public auction: but, my lords, the vastness of the price was no objection or discouragement to a person already undone, provided he might be made easy in the manner of payment, and run no hazards. Men of substance might very well be afraid to present, as his lordship's phrase is, a whole estate at once for an uncertain and precarious prospect, either of success in the office, or of life or health to enjoy it; so that the fittest engines and instruments to effect the noble lord's purposes, were men of small and shattered circumstances. And therefore the Commons go on and charge, that there was a fraudulent and unwarrantable method made use of in paying for the Masters' offices out of the very money belonging to the innocent suitors of the Court; that this practice was notorious and public, and the person at the bar well acquainted therewith. Your lordships now observe, that the greatest difficulty of all to an indigent person, viz. the payment of the money, was, by this dangerous and unjustifiable contrivance, totally removed, and when a man was neither to be out of pocket himself, nor thrown into any fears and apprehensions of being questioned for misapplying the suitors' money, is it at all to be wondered at, that the price of these offices should swell to that bigness, as long to be the topic of conversation in the world about us, and at last become the subject of a national enquiry? This scandalous method of payment is of the most malignant kind, and a suitor is, contrary to the law of nature, made the instrument of his own destruction; his substance, which ought to be his support and relief, is turned to his oppression, or if part only

be taken from him, it is in order to arm another to dispossess him of the rest. The great person, whose duty it is to protect his property, is the promoter of his loss, and is the more unpardonable in it, as he turns that loss to his own advantage. If it be a thing universally condemned, for a person in the Earl's late high station, to borrow a suitor's money without his knowledge, notwithstanding he offers a moderate interest for it, because it is encouraging the Masters, by his own example, to lend out sums with as much justice to other people, how infinitely greater is this offence? If it be a crime to put men's properties to hazard, how much blacker is it to take them to one's self, and incorporate the widow's mite with one's own heap! But, my lords, when such prodigious sums were extorted from the Masters, could it be any mystery how they were to re-imburse themselves? For although they paid no money of their own, yet they made themselves accountable for what they used of the suitors: was it not an obvious consideration, that if they dared pay for their employments with part of the trust-money, they meant to traffic and game with the remainder too? They came in Masters upon such terms, for no other purpose but to pillage and fleece those under their care. What must be the natural and unavoidable consequence of lodging in their hands such uncontroulable and licentious power over their cash, but that the first ill run would crush them at once, and pave the way to great deficiencies? But lest the prospect of so calamitous a case should deter the most greedy from contracting for a Master's place on terms the most inviting, you will see, in the series of this affair, what shifts, what artifices were employed, to hide such a miserable scene from the eyes of the world. For the Commons, in the next place, charge, that Fleetwood Dormer, esq. having embezzled great part of the effects belonging to the suitors of the Court, died indebted to them in divers sums of money, amounting in the whole to 25,000*l.* and upwards; that the noble lord at the bar has not made any proper enquiry into Dormer's deficiency, taking no care about his effects, but has endeavoured to hide and conceal, from the suitors, the state and condition of the office, and that this concealment was, lest a public discovery of the deficiency might lessen the unjust gains he proposed to himself from the sale of the Master's places. Your lordships observe here, that one accusation is, a great and manifest neglect in the execution and discharge of his duty; a wilful and deliberate neglect; not arising from the infirmity of human nature, but growing out of the corruption of it; mitigated by no one shadow of excuse, but aggravated by the attendance of many foreseen ill consequences. If an office abused in the most fatal manner, on the brink and precipice of utter destruction, was not a proper object of his immediate inspection, no wonder the most prosperous offices did not deserve his care; what Master, who was an eye-witness of this, would be under that decent and necessary awe of the presiding person, and keep himself within the just bounds and limits of his office? This, my lords, is indeed a wilful neglect: but if you look on it in another light, in order to conceal the deficiency, that the value of the Masters' places might not be run down, it will appear, in its worst colours, an artifice to support and carry on a fraud, a contempt of duty for the sake of corruption. The series of the accusation will evidently shew that the Earl's heart was set upon this concealment: for we shall now find him beginning to display his utmost ingenuity; here was an accident, which, unless great care were taken, would entirely frustrate and blow up his designs; were Dormer's deficiency divulged abroad, and the whole body of the suitors (who had sure a right, even from compassion, to be taken care of) made acquainted with the ruinous condition of his office, who would answer that the government itself might not have been alarmed, and a public inspection made four years ago into the other Masters' accounts too? The dread of a public examination now overbalanced all other considerations; and as some of the suitors (whose intelligence and sagacity were better than the rest) were daily pressing and soliciting for their due, the office-money embezzled, no care taken to secure Dormer's effects, all supplies and demands on Wilson cut off by the wretched and unwarrantable composition made for the suitors without their consent or knowledge: these distresses and difficulties pressing and surrounding this unfortunate Earl, it was necessary some measures should be immediately concerted to prop and support this tottering office; and therefore, my lords, you will now find him arming himself with the weapons of authority and uncontroulable power, and playing the tyrant under the specious pretence and colour of duty. For the Commons go on and charge, that the person at the bar, during the time he was Lord Chancellor, made an order for the Masters to bring in their respective accounts of the cash and securities in their hands; (a very proper inspection, no doubt, had it been well designed) but your lordships will observe the charge is, that this was done to terrify and induce the Masters to contribute money towards Dormer's deficiency; to conceal the true state of the deficiency from the knowledge of the world: and they further allege, that in pursuance of this intimidating order, money was contributed for that purpose, part of which we shall prove to be paid since the Act of Grace on the 11th of August, 1721, and that those accounts were not insisted upon after that. My lords, this proposal met with its deserved opposition from the Masters; however, the apprehension of losing the cash and effects prevailed at last, the point was carried, and the sum accordingly contributed. When your lordships have but just now seen that there was a very visible and designed neglect in forbearing to enquire into Dormer's effects, and to go to the bottom of his deficiency; is it to be imagined, that this

calling for the state of their accounts could be done out of vigilance and duty? No man can think so; Were they ever insisted upon after the contribution? His lordship knows they never were; if the real design was to search and examine them, it was as proper a time to do it after the 11th of August as before; nobody believes they were in a better condition, the Masters had the same free power of their cash, and the person at the bar had as deep a sense of his duty after that day, sure, as before. If the misbehaviour of Dormer gave occasion to this designed inspection into the general condition of the other offices, how came it about the design was never carried into practice, till his majesty, out of compassion and paternal goodness to his oppressed people, gave directions for that end? The deficiency of Dormer continues still, and yet the Earl impeached has made no regulations in the offices, examined no accounts during the time he remained in that high post, nor set up any lights, or land-marks, whereby the present deficient Masters might have cleared the rocks on which they have split. No, my lords, this was only a pretence of regulating; a dissimulation of duty, for the better concealment of Dormer's frauds. Besides, the proposal that the Masters should contribute to the patching up a deficiency in another's office, is unjust in itself, and fatal in its consequence. Can any thing be more repugnant to justice than to oblige one person to repair the losses of another, incurred without his knowledge or fault? Or where is the advantage to the offices in general, allowing it to be just? If Dormer's deficiency be supplied out of other offices, will not those offices miss those supplies, and be as much impoverished in the general, as Dormer's is mended in particular? Surely, my lords, there needs no reasoning about this, the thing speaks itself. The Commons take notice of an alternative in this Article offered to the Masters, either to consent to a contribution, or to be immediately stripped of the cash and effects; so that upon paying down the sum demanded, a Master was confirmed afresh in the ill conduct of his affairs, he pays his fine, and renews his lease of knavery and impunity; his books may be kept as close from inspection as the books of the Sybils, they contain alike the destiny of mankind, and he may go on with authority to prey upon the properties of the fatherless and widow; and no doubt the Master argues upon as good grounds as the noble Earl; and concludes, that if, for the advantage of his unjust schemes, the impeached lord thinks it highly reasonable to extort money from him belonging to the suiters, which is never to be restored, it may, with parity of justice, be as decent for him to take the same liberty with their cash too, for the service of his own. But the Commons detest the corrupt practices of both, and expect exemplary justice on the great offender at the bar.

Thus far I have touched in a general manner on the management and artifices used in the concealment of Dormer's deficiency, and, no doubt, it must create an universal astonishment in your lordships, how it could ever enter into the inmost recesses of his thoughts, that so great a calamity as this could possibly be for ever hid in darkness; that so torn and ghastly a wound could ever heal of itself; or rather, that it should not by long neglect become quite incurable.

Your lordships will observe in the ensuing charge, That Mrs. Elizabeth Chitty, an unfortunate widow, having obtained an order from the Earl at the bar, by virtue of which Mr. Edwards, Dormer's successor, was to pay her 1,000*l.* part of a much larger sum deposited in the hands of Mr. Dormer, and Edwards refusing to pay the same, not having sufficient in his hands, out of Dormer's effects, to answer the said demand, the impeached lord did again make use of the same artifices, and stratagems to compel the several Masters to contribute this further sum of 1,000*l.* to stop the complaints, and stifle the murmurings of Mrs. Chitty; and did also intimidate them, by representing, that if the deficiency were known, a parliamentary enquiry would probably ensue, and the Masters be deprived of their offices, having bought them contrary to law: this not taking effect, the Commons charge, That in order to accomplish his wicked and corrupt purposes, he did himself pay the 1,000*l.* into Lockman's hands, for the use of Mrs. Chitty, saying, this was the last money she was ever likely to receive, by reason of a deficiency in Dormer's office. My lords, you see here is a second attempt, a fresh endeavour to conceal the deficiency by the aid and assistance of the same measures made use of before, but backed by the terrors of a national inspection. The continuation of these arts is no small presumption, that the end designed was unjust in the Earl's own judgment. His condemnation, in this instance, arises and springs out of his own arguments and conduct. If a public discovery of this deficiency would lay the foundation of a public and national examination; what safer, what more expedient measures could be concerted and taken, than immediately to satisfy Mrs. Chitty's demands; by the refusal of which, this public discovery, so much, and so justly apprehended, might come out? And what stronger inducement could he lay before the Masters, why the burden of this payment should fall upon them, than by shewing in how fatal a manner that national examination would affect themselves? He represents to them their having purchased their offices (and many of them of himself too) in direct defiance of the law, and that it was their near concern to avoid the pit, in which they were likely to be swallowed up. My lords, I take this to be a plain confession of his crime: our accusation is, that the sale of these offices is repugnant to law and justice; here is his own manifest acknowledgment that it is so, but aggravated and heightened by this flagitious circumstance, that whilst he is reminding the Masters of that guilt which he himself shared, he draws an ar-

gument from that very guilt, why they should assist him in a fresh offence; and since they had already offended against the laws of the land, if they would avoid punishment, the best way of doing it, was by a new transgression. You have his own word for it, that he knowingly exceeded the statutable limits prescribed by the wisdom of our ancestors, for the safeguard and protection of the rights and properties of the British nation. If the buyer is criminal, how can the seller be innocent? And yet his lordship, it seems, knows of no statute now in being, on which judgment can be prayed in this prosecution. It is this wilful and deliberate transgression of the laws that has opened that fountain of iniquity which has drowned and laid waste the fortunes of our fellow subjects.

In stating the Charge thus far, it is evident, that neither a wilful neglect of duty has been wanting, nor a thorough contempt of justice; no pains spared, no artifices unemployed to plunge the deficiency in Dormer's office in the deepest obscurity. You have found him forcing and wresting a contribution from the Masters; not such a one, my lords, as would equally answer all demands on the office, but as a bare sufficiency to satisfy the importunities of persons for the present, and thereby lull others into a destructive and fatal security; to make a false shew and appearance of ability in this office, which the Masters were afterwards directed to do in theirs. Your lordships shall soon find him acting another part, and disheartening Lockman from engaging any further in the marriage with Mrs. Chitty, (for the solicitations of a weak woman to have her just due might be easier dealt with) assuring him, that the deficiency was such as must infallibly root out all future hopes and expectations on her account; and yet the close of this Article sets forth, That so lately as the 5th of December last, this Earl sitting then in open Court, did, in a cause depending before him, protest and affirm, That, for his part he knew nothing of Dormer's deficiency, but as public news. My lords, if truth and sincerity are not to be found in the seat of judgment, where must we look for them? Where shall we place our confidence, if there is no dependence on the affirmation of a judge? Where shall we seek examples worthy our imitation, if the uprightest places afford them not? But to pass over this unpleasing scene, your lordships will be pleased to take notice, that the unfortunate person at your bar, in hopes still to cover the deficiency, made divers orders on Mr. Edwards for the discharging and paying the entire and full dues to some of the suitors, whilst others were put off with an inconsiderable share. Is there any thing more noble in the mind of man, than a desire of distributing equal justice? Without equality justice is destroyed, and sacrificed to the passions and infirmities of men; and yet your lordships will find there is no virtue so lovely, no principle so amiable, but must be abandoned and prostituted to the carrying on this wretched scheme. Such is ever the miserable fate of those who dip their hands in corruption; they engage originally in one vice only, but are forced to adopt and cherish a number of others to keep that one a secret from the world. For it becomes, at last, necessary to do injustice for the sake of security; people's necessities, though they may be alike, yet are their passions quite different, and a necessitous and starving suitor of a broken and worn-out spirit might be turned away from his lordship's presence with a tenth part of his right, whilst one of a more obstinate make, and a bolder constitution, would insist upon, and wrangle for the whole. This difference of tempers might facilitate, possibly, such unjust dealings for a time; but could this partial preference of one person to another, in manifest contempt and violation of the rules of equality, be any otherwise of service to this noble lord, or make any amends for diminishing reputation, but by stopping the mouths and cries of the soliciting suitors with such proportions as would go down with them, prevent the contagion from breaking out, and disappoint the application of a public remedy? You see plainly the miserable consequences the sale of the Masters' places has been attended with; the fraudulent method of payment; the unjust and uncontrouled abuses of the Masters; the great neglect of Dormer's deficiency; the unjustifiable concealment of it; the stretches of art and injustice in the manner of doing it; it is one continued series and succession of male-administration, calculated for the advancing the profit and gain of the person at your bar. Your lordships would, no doubt, wonder else, why so great a trust as upwards of a million of money should be reposed in the Masters, without some reasonable security on their part, or some proper restraint laid upon them for their due and fair discharge of it, especially, since Dormer had broke, and brought upon the sufferers so fatal a misfortune: and this it is, my lords, that raises the resentment and amazement of the Commons, who farther charge, that, notwithstanding the Earl well knew that Dormer's deficiency was chiefly occasioned by the liberty he assumed to himself of trafficking and gaming with the suitors' effects, and that the other Masters did, or had it in their power so to dispose of, or otherwise misemploy the money and securities in their hands; and, notwithstanding a reasonable and proper scheme was laid before him, whereby the like misfortune might be prevented for the future, yet the Earl never required any security, or laid any restraints on the Masters, but left them to the wide and boundless liberty of abusing their trust as avarice and ambition suggested occasions. I will not enter into the consideration how far it may have been the practice not to require security; I take it for granted, if none has been formerly demanded, it was because the presiding persons were vigilantly executing the duty of their offices, and by frequent inspections into the Masters' accounts, restrain-

ing them from the exercise of unwarrantable power. But were that otherwise, bad precedents, my lords, will not justify omissions; no, nor extenuate them; though I believe not any instance can be produced, not so much as the appearance of any, where it was so indispensably and absolutely necessary as in this case; there was no need or use of any example to remind him of it; common prudence teaches us the necessity of providing against disorders or losses for the time to come, which our past negligence has once brought upon ourselves or others: it is the only atonement a man can make for his former faults; and if the person at the bar had had at heart the least intention of repairing the breaches made in the justice of that Court where he governed, here was the most fortunate opportunity of doing it: for your lordships shall find the very Masters themselves, in a manner, importuning and soliciting him to tie up their hands by such proper and equitable restrictions, as would put the fluctuating fortunes of their fellow-subjects on the firmest establishment. Had the noble lord listened to this proposal (which will come more properly within the province of another gentleman to open to your lordships), the unhappy deficiencies in the present Masters' offices had been fortunately prevented, the clamours of the world about us had been stopt, and the nation easy. Did not necessity demand it? The deplorable havoc committed since shews it did. Did not the national voice call aloud for it? The prosecution of this day is sufficient testimony. Was it not his duty? Sure I am, it would have been his happiness. And shall not the ruin of widows and orphans plead for punishment and reparation? The Commons rely upon your lordships' justice that they shall.

But, my lords, there is a charge behind, which contains matter worthy your observation; it sets forth, That his most sacred majesty, out of his fatherly goodness to his people, having directed an enquiry to be made into the accounts of the Masters in Chancery, in the month of November last, the Earl impeached did, by his advice and authority, persuade and induce them to make false representations of their accounts and circumstances to his majesty in council, and to assist one another with cash and effects to make a false shew and appearance of their ability, that a parliamentary enquiry might be prevented; and did oblige them to declare in writing, at the foot of their accounts, that they were able and willing to pay the balance, although the Earl well knew many of them were not. Your lordships, sure, cannot but be astonished at the boldness of this attempt, to defeat and frustrate the gracious intentions of his most sacred majesty, to take from his unfortunate subjects that redress and satisfaction, which their duty and loyalty, their wrongs and sufferings had claimed in his royal mind; to deceive his majesty at the very council-table, where he had the honour himself to sit; and to deprive the Commons in parliament of that inquisition for justice which the nation expected at their hands. The dread and apprehension of parliamentary justice is a strong presumption of his guilt. Why, my lords, should public enquiries terrify and dismay an innocent person? National acquittals are eternal monuments of renown; they are more glorious and lasting than pillars of marble, or triumphal arches; they remain upon record to all posterity, never to be defaced by the malice or teeth of time. But, my lords, as there are monuments of praise, so there are columns of infamy, there are national condemnations as well as national acquittals; and the noble lord must now take his fate in the judgment of your lordships, which he so much dreaded. It is an evidence of a man's crime, if he flies for it; it betrays a self-conviction in the party accused, in that he dares not abide a legal trial; it is another circumstance against a man, to be found tampering with a witness, and carries with it some presumption of his guilt; because no innocent person wants the aid and assistance of a false evidence. Your lordships have seen him, as it were, flying from his trial, and you will now find him tampering and intriguing with the Masters in the most dangerous and artful manner: and that the Masters are evidence, and close ones too, will fully appear at your bar. You shall find him colouring and glossing over the Masters' accounts, with touches and strokes of his own, hoping to shelter his own male-administration, by putting the vizor of integrity on theirs; this is the glorious exit he makes; thus he finishes his impartial and just administration.

My lords, the evidence to support this Charge will be opened to you by the learned gentleman to whom the particular proofs are assigned; I shall not, therefore, take up your time in entering upon that which exceeds my province; I only beg leave to hope for your further indulgence, while I make a general observation or two on the nature of the Charge.

The ground-work and basis of this noble person's crimes is corruption a thing in private life the most detested, and in public persons of the most malignant influence to the state. It deprives the crown of that solid strength and grandeur, that shining lustre and beauty, which a just execution of the laws reflects upon it; it disarms the people of that security and safety which naturally flows upon them from an impartial and uninterrupted administration of justice. The consequence of which will ever be, the crown will lose that proper reverence and veneration from the people which are its due; and the subjects, restless and uneasy for want of justice, will lay hold on the first opportunity of throwing off allegiance itself. It brings a national reproach upon us; and, by sowing the seeds of discontent at home, exposes us to the incursions and depredations of our enemies: but, my lords, when it protects itself under the shadow of justice, and puts on the smiles of innocence, it is high time to rise up in defence of our violated laws, and set a public mark of infamy upon it. To what purpose are judges

and ministers restrained, by the provision of acts of parliament, from selling offices under their protection and care, if men shall hide themselves under example in bar of the laws? Will example plead for him? Surely, my lords, there are none such: or if there were, what would that be but to defend crimes by their own blackness and malignity? As if a distemper were not to admit of any remedy, because it is general and contagious. But supposing, for argument's sake, there have been great persons, his predecessors, who have ventured upon small presents and gifts on such occasions, does it follow, with any colour or pretence of reasoning, because those have been confined within the bounds of moderation, therefore the extortion of exorbitant sums, to connive at outrageous measures and oppressions, exceeding almost the fears of the oppressed themselves, should take shelter under the poor pretence of precedent and example? Alas! my lords, I am afraid example only operates according to men's appetites and passions; else whence comes it about, that example should have all the beauty of an angel in this instance, and all the deformity and horror of a fiend in another? His great predecessor * made no attempts to conceal a deficient office in his time. No, my lords, he had no corrupt purposes to feed. The same noble person never ordered some suitors their entire demands, and left others groaning and starving under the pressure of an unequal distribution; he did the direct contrary. Happy had it been for this unfortunate person, happy for the widows and fatherless, had he copied after the example of his renowned predecessors, in their wise and upright distribution of justice, as well as flown to their eminent names for protection, in the illegal practices wherewith he is charged! To what a low ebb is the virtue and reputation of this nation reduced, if impunity shall justify offences; if bribery shall receive a patronage from great examples, and the basest actions be adorned with the same lustre and honour, that are only due to the most virtuous? But, my lords, the Commons have found him bargaining and bartering an office,† in the gift of the crown, for the poor and sordid advantage of an hundred guineas. This is an instance wherein the very person of the king is insulted in the most flagrant manner; it is a prostitution of the regal honour and dignity, by one who had the trust reposed in him, as one of the joint guardians of the realm during his master's absence: as if, too, there was no access to the throne for grace and favour, no tasting the refreshing streams of that fountain of goodness which rises in his majesty's breast, for the universal comfort of a dutiful and happy people, but by the assistance of the most abandoned measures. Can your lordships any longer wonder the people's properties were employed to ill purposes, when his majesty's prerogative is trafficked with and sold? Could it be expected a poor suitor's right should remain secure under his protection, as Chancellor, when the king's were precarious in the hands of his own trustee? And yet, my lords, how often, and how gloriously has this nation vindicated and asserted its own honour, in the ruin it has poured on the heads of corrupt judges and ministers! It was the loss and forfeiture of all the lands and estate of sir William Thorpe, justice of the King's-bench, who was sentenced for bribery in the reign of Edw. 3. Nay, the sentence extended even to loss of life itself, though that part has been thought not sufficiently warranted, and should have ended in imprisonment only. Every one knows the vengeance hurled on the earl of Middlesex, which is to be found in the rolls of parliament. This unfortunate earl, having delayed justice to the farmers of the customs, in a matter referred to him by king James 1, and having polluted his hands with exorbitant bribes, was sentenced in parliament to lose all his offices which he held in the kingdom; to be for ever incapable of any office, place, or employment in the state; to be imprisoned in the Tower of London during the king's pleasure; to be fined 50,000*l.* never to sit in parliament any more, nor to come within the verge of the king's court. The case of my lord Bacon is another instance of the virtue and integrity of your ancestors, in the abhorrence they shewed, and the punishment they inflicted on that great man's crimes.

My lords, if the offences committed by the Earl, and those of the great persons just mentioned were compared, and the consequences naturally flowing from them, it would be found how much greater guilt is comprehended in the Charge of this day. I will not spend your lordships' time, in enlarging on a distinction between bribery in an office, and bribery by colour of an office; between bribery in a judicial way, on account of judgment in causes, and bribery in the disposal of offices, that concern the administration of justice; but only observe, that the sale of the Masters' places, accompanied with the circumstances I have already explained, is attended with more mischievous and oppressive consequences to the subject, than a judge's accepting a bribe in causes depending before him. By means of the latter a person is put to an extraordinary expence indeed to come at his right; or if he is deprived of it by a corrupt determination, yet still there is another resource; and his happiness is, that he may appeal to parliament for redress. But the consequence of the other case is, he can come at no right at all; his money is embezzled and lost, the Master runs away, the Chancellor is in the secret, and there is no remedy left. Is it any excuse to say, that the Master is liable to answer for his own frauds, and not the impeached lord? I beg only to put the following case: If a keeper, who has undertaken the care and management of a madman, wilfully neglects his duty, sees the disordered person going to do mischief, and does not interpose, is not the

* Lord Cowper.

† Clerk of the Custodies.

keeper responsible? Surely, my lords, by the law of reason he ought. But what if the noble lord did not foresee the mischief, and yet be the occasion of it, from the exercise of an unlawful act; there is no question but he would be answerable. A person intends to rob the king's forest, and shooting at a deer, kills the keeper, is not he guilty of murder? No doubt he is: because though he did not intend murder, yet the act he was about, was an unlawful act. But, my lords, the person at your bar has not this excuse; he foresaw the consequence, and his intention was bad.

When the Commons consider the high station in which this noble lord was placed, the many signal marks of his majesty's favour and munificence bestowed upon him; the notorious breach and violation of his oath, and of the several great trusts reposed in him: when they have found him prostituting and abusing the authority and dignity of the crown, trampling upon the laws and statutes of the realm, destroying and confounding the properties and rights of divers of his majesty's subjects; the Commons could not sit still, and see this great offender triumph in the luxury of unpunished crimes, without using their best and most effectual endeavours to bring him to punishment, and to make him an example of the justice of the present age, a warning and a terror to times to come.

Sir *Clement Wearg*, (Solicitor General.) My lords, I have likewise received the commands of the Commons, to lay before your lordships the evidence, in maintenance of the Charge of High Crimes and Misdemeanors against Thomas earl of Macclesfield.

The nature of the Charge consists,

In illegally and corruptly selling and disposing of offices, which concern the administration of justice; in using and practising many indirect and unjustifiable methods for the keeping up the price of such offices, in order to advance his own unjust gain.

My lords, the honour of every government, and the happiness of every nation, depend upon nothing more than a strict impartial administration of justice; and the justice of every court depends not only upon the uprightness of the judge that pronounces the decree, but likewise upon the honesty and uncorruptness of the lesser officers, who are assistants to him, and upon whose reports and representations his decrees are founded.

It was doubtless from a just sense of this, that the legislature, in the 5th year of Edward 6, in order to prevent such a corrupt bartering for offices, which was before that statute, against law, wisely provided, that where any office, which concerned the administration of justice, not excepted in that statute, was procured for money, the office should become void, and the parties concerned in the corrupt bargain disabled from holding it.

The Court of Chancery, in which the Earl presided, must be allowed, with regard to the number and great value of suits instituted there, to be by far the most considerable court of justice within this kingdom.

The Masters of Chancery are (next to the person that has the custody of the great seal, and the Master of the Rolls) the great officers of that Court.

They are, by commission under the great seal, associated with the judges in hearing causes, and claim a right to interpose their opinions in the making of orders and decrees under that commission.

They are entrusted by the Court to state and report matters of fact, upon the truth and fairness of which reports the justice of the decree of the Court must depend. They are sworn to advise the Chancellor himself.

And of late years they have been entrusted with the effects and estates of the suitors of the Court, to an immense and incredible sum.

My lords, great part of the Charge against the Earl consists in setting up those places to sale, in using unwarrantable methods to encourage purchasers, and increase the price.

It is matter of great surprize, to find in his lordship's Answer an insinuation, that it is not illegal, or against any statute, to sell those offices.

Surely, my lords, there are no places that concern the administration of justice, more improper to be sold from the nature of them, or the selling of which is more evidently against the statute of Edward 6, than the Masters in Chancery, unless it be judges themselves.

But it must be owned, the expressions made use of by his lordship, are conceived in such doubtful terms, that it is difficult to know whether he intends to represent the lawfulness of selling those places for a price, or only of taking a present which the party gives freely, voluntarily, and of his own accord, and which his lordship says his predecessors used to take.

There possibly may be a difference between a present and a price; if there is, it is the latter his lordship is charged with taking; a price fixed by his lordship, insisted upon, haggled for, and with unwillingness paid by the purchaser.

But, my lords, even this may be said to be nothing more than an offence against the statute of Edward 6, which, as it creates the offence, so it prescribes the punishment.

Where the person admitted to the office is in all respects equal to the great trust reposed in him;

Where the price given bears a proportion to the lawful gain arising from such office, there may be some pretence to say, it is only an offence against that statute.

But if persons are admitted to an office, by which they are entrusted with near 100,000*l.* and give as much, or more, for that office, than their whole substance amounts to;

If the price they give is greater than can possibly be given, by one who would be contented with the honest profits of the office; if

Mr. William Kynaston to the office of a Master in Chancery, in August, 1721. We will shew you, that before Mr. Kynaston was admitted to be a Master, he was advised by Mr. Rogers (with whom he had then contracted for the sale of his office for 6,000*l.*) that the Lord Chancellor would expect 6 or 700*l.* for his admission; upon this he applied to my Lord's secretary, Mr. Cottingham, (who appears to have been the broker on all these occasions) and desired to be recommended to the Chancellor for that office, and told Mr. Cottingham, that if it was necessary, he could obtain my lord Bradford's recommendation; the secretary only answered, That another Master had given 1,500 guineas on the same occasion; Mr. Kynaston then offered 1,000*l.* Cottingham replied, He could mention nothing less to the Lord Chancellor than 1,500*l.*; but being afterwards asked by the person who was to pay the money, what sum would be insisted on; answered, It must be 1,500 guineas; nothing, it seems, was to be abated, for this (Mr. Cottingham told Mr. Kynaston) was one of the best offices; being the fullest of money and securities—Money and Securities, my lords, the property of the suitors of the Court; and how fatal the Masters making use of such money for their own profits has been, in order to reimburse themselves for the very great sums paid for their offices, is now too severely felt by numbers of helpless orphans and injured suitors. Mr. Kynaston, however, seeing no possibility of admission without paying the whole sum of 1,500 guineas, complied at last, sent the guineas to Mr. Cottingham, who afterwards paid them to the Chancellor; and the next day Mr. Kynaston was admitted and sworn a Master.

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However, Mr. Bennet again desired he would go to the Chancellor, and said that if the sum he had offered would not do, he would give 1,500*l.*; Cottingham desired to be excused from going on that message, and said my lord did not love haggling; and that if Mr. Bennet would give no more, he might lose the office, for that if the Chancellor should refuse that sum, he would not go with any other offer. Upon this, my lords, Mr. Bennet, at last, consented to give the 1,500 guineas; and this will appear to have been what the lord Macclesfield calls Mr. Thomas Bennet's free gift. The guineas were paid to Mr. Cottingham, who paid them to the Chancellor, for which Mr. Bennet was admitted into his office, which appears to have cost him 9,075*l.* and that very sum, upon the making up of his accounts, appeared to have been wanting in his office, for the making up of his balance due to the suitors of the Court. I must take notice to your lordships, that the lord Macclesfield, in his Answer, alleges, that the said Kynaston and Bennet pretending they were disabled from answering to the suitors of the court, so much money as he had taken from them at their respective admissions, the said Earl did, before the Impeachment, pay into the Court of Chancery, for the use of the suitors of that Court, the two several sums received by him from Mr. Kynaston and Mr. Bennet; but, my lords, that we shall shew to be a gross mistake in the Answer, for we shall prove the said sums were not repaid by him till after the Impeachment, and after they had, by affidavit, charged the payment of these sums as one cause of the deficiency in their offices.

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I come next to open the evidence we will produce, to prove the illegal and corrupt admission of Mr. Mark Thurston to be a Master in Chancery, as it is laid in the 8th Article. He succeeded Mr. Borret about the 5th of August last past: and, my lords, notwithstanding what the earl of Macclesfield alleges in his Answer, that he was informed by Mr. Godfrey and Mr. John Bennet, that there was like to be no deficiency in that office, we will shew your lordships, that before Mr. Thurston's admission there was a great confusion in it; and that his lordship must have forgot himself, when he says he ever was acquainted by those two Masters, that there was like to be no deficiency in that office.

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My lords, I will make this remark upon this transaction; that the taking such an extravagant sum of money for an office, in which there was like to prove a great deficiency, was so far from being thought blameless even by the Earl himself, that it looks as if this way was necessary to be found out, to hide this transaction too from the secretary, who had had the first hand in it: and, to take all cause of suspicion away from him, he was ordered to be sure to take no money from Mr. Thurston on account of his admission; which he observed so religiously that I think he scrupled even his own fees.

Before I conclude, my lords, I must take notice of an expression in the Earl's Answer to the two last articles I have mentioned.

That, of the money he received from Mr. Elde, he retained no more than 1,850*l.* and, of that received from Mr. Thurston, no more than 2,000*l.* By this, I presume, the world is to believe, the Earl made an immediate restitution of the remainder of the money: but, my lords, we will shew you, that no money was returned to Mr. Elde till November last, a time that he stood in need of it to shew and produce his balance; nor to Mr. Thurston, till October last, at which time it was evident an absolute stop must be put to the infamous practice of stock-jobbing with the suitors' money; and which of consequence would put those two Masters out of a possibility of reimbursing themselves the great sums so lately paid for their offices.

My lords, the next thing we shall prove will be, that in all these transactions Mr. Cottingham has acted by my lord Macclesfield's immediate directions; and when we have proved that, and the several facts I have now opened to your lordships, I doubt not but you will be of opinion, that we have fully made out the allegations in the Fifth, Sixth, Seventh, and Eighth, Articles, in their utmost extent; and that the said Earl has taken the several sums laid to his Charge, illegally, corruptly, and extorsively, in breach and violation of his oath as Lord Chancellor, and of the great trust in him reposed, contrary to the duty of his office, and against the good and wholesome statutes of this realm.

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pleased to say, in his general answer to all these Articles, "That he hopes receiving presents on such occasions is not criminal in itself, or by the common law of this realm, and that there is not any act of parliament by which the same is made criminal." Though I have not had the happiness to have been bred to the profession, I must beg leave to remind him of the statutes of Richard 2, and Edward 6, as to the statute law: and by all that I have ever heard, or can learn, the whole tenor and meaning of the common law does disapprove and condemn such practices, (though possibly it has not been an adjudged case). And the statutes I have mentioned are one proof of such meaning of the law, to me, at least, who have always looked upon them to be comments and declarations, made from time to time to explain and enforce such construction.

Putting up offices of justice to auction, my lords, is repugnant to the dictates of plain reason, and consequently to the whole sense and spirit of the common law of this realm, which is founded upon reason; and in this repugnance to the intent and meaning of the law of the land, lies this offence (in my poor judgment) as to the illegality of it.

We hope therefore, my lords, (when we have given our evidence) that it will fully appear to your lordships, from what we have opened, that the earl of Macclesfield has taken the sums charged upon him; and that he has taken them as they are charged in the Articles, extorsively, corruptly, illegally, in breach and violation of his oath as Lord Chancellor, and of the trust in him reposed.

I am now come to the Ninth Article, which I am commanded to open to your lordships; and, indeed, it is a most extraordinary instance of human frailty: the earl of Macclesfield here is not charged with taking money of a person who received an office from him, but of one who quitted an office; not for an admission, but for a resignation.

I believe this is the first instance, my lords, where any person, on the other side of this bar, was ever accused of forgetting his own dignity, the dignity of the august body he belonged to, and the honour of his sovereign, whose counsellor he was, and whose royal authority was, at that time, lodged in his hands, for 105*l.* This is so amazing, that did I not know there was full evidence to the most minute parts of this Charge, I myself should not believe it; and I am sure your lordships' hereditary greatness of mind must make it so inconceivable to you, that I shall need all your patience and indulgence in what it is my duty to state to your lordships, till you hear the evidence we shall produce.

The case, my lords, is this: Mr. Thomas Bennet, one of the Masters mentioned in the Sixth Article, soon after his admission, was desirous to part with his office of Clerk of the Custodies (which is in the gift of the crown) to Mr. Hamersley; but being unwilling to do any thing, without my lord Macclesfield's approbation, he applied to Mr. Cottingham, his secretary, to obtain it upon this occasion. Mr. Cottingham promised to acquaint his lordship with this request. In a few days Mr. Cottingham told Mr. Bennet, that he had acquainted my lord with his design, but said, a present was expected of him; and asked him, what he would give? (Your lordships will observe, that this was their constant method, in driving all these bargains; for they were conscious that they were doing what was illegal.) Mr. Bennet replied, that he did not apprehend that any thing was due to my lord on this account; for that he succeeded his brother, Mr. John Bennet, and neither himself, nor his brother, made lord Cowper any present: and further added, that he hoped my lord would not insist upon any thing, on so trifling an occasion, since he had so lately paid him so considerable a sum. But still Cottingham insisted that a present was required. Upon which Mr. Bennet, seeing himself so hard driven, said he would give my lord 105*l.* In a few days Cottingham told him, that my lord accepted the 105*l.* but that he was to look upon it as a particular favour, that he accepted so small a sum; and that if he would bring the money to him, Cottingham, he need take no farther trouble, for my lord would apply to the king for leave to resign. Accordingly, on the 28th of July, 1723, Mr. Bennet carried a Bank-note of 105*l.* to Cottingham; and, in about three weeks time, (your lordships will be pleased to remember that his majesty was then abroad) Cottingham told him, that the sign manual was come over, and chid him for not taking out the patent; the consequence of which was, Mr. Bennet did take it out, and when it came to the great seal, no consideration was had of what he had given before, but it cost him about 64*l.* for the seal.

We shall call Mr. John Bennet to inform your lordships, that when he resigned to his brother, he asked the lord Cowper if any thing was due to his lordship, who told him nothing was due.

This, my lords, is the naked state of the case, and I shall make no remarks upon it; I think nothing can be added to illustrate it, because I am confident there never was any thing like it.

But I think, out of duty to the Commons, and justice to the earl of Macclesfield, I am obliged to take notice of what he alleges in his own defence against this Charge.

His lordship is pleased to say, "That though this office of Clerk of the Custodies has been usually granted by the crown; yet it has been always looked upon as the right of the Lords Chancellors, or the Lords Keepers, to recommend to that, and other offices under the great seal, and approve of the deputy to execute the same; and upon such recommendations, and approving of deputies, have accepted presents, and looked upon the same as their right."

I should not have taken notice of his putting

this part of his defence in the plural number, and endeavouring to shelter himself under the pretended practices of his predecessors, if he had confined it to this Article; but in his general Answer to all the Articles we have opened to your lordships, he says, "That he has done no more than his predecessors, great and able men, have done before him, and therefore hopes that it shall not be imputed as a fault to him." And indeed this reasoning runs through almost his whole defence.

My lords, we could shew, that he has done more than any of his predecessors; but your lordships very well know, that is not now in question. I am sure, how great or able soever a man may be that commits a fault, your lordships will always be great enough, and able enough to punish him for it, when he comes before you. And I am surprized the Earl should suppose, that you will connive at a corrupt practice in him, (if this be one) because you have not condemned it in others, who were never called to answer it before you, if any have been guilty of it. I hope your lordships will look on it as a new way of reasoning, first made use of by the earl of Macclesfield, to justify his own faults by the faults of another, and extenuate the danger and malignity of a distemper by the extent and inveteracy of it.

By the rest of this argument of his, your lordships plainly see, that he himself thinks that the acceptance of any gratuity for advising the king, as a counsellor, to grant this office, had been highly criminal, for he was, at that time, one of the lords justices, and during this whole Charge a minister of state; but he does not say that he obtained leave for Mr. Bennet to resign, and a new grant of the office as a favour from the crown; no, that he seems to admit would have been highly blameable; but he says, that as Lord Chancellor, he had a right of recommending to this office; and his whole conduct unhappily explains, that he looked upon a right of bestowing or recommending to be a right of selling; so that by his own argument, he thinks himself justifiable in doing that as the chief officer and distributor of justice, which he seems to own would be highly unjustifiable in a minister or servant of the crown.

I shall take notice of but one part more of his general Answer to the Articles, which we have opened to your lordships, and that is where he says, "That during his continuance in the said office of Lord Chancellor, or at any other time, he never once had a design or view, or wish to raise to himself any exorbitant gain or profit, and appeals to the whole tenour of his life and actions for the truth of his assertion."

This, my lords, is an instance how little the greatest men are acquainted with themselves, and how much they are liable to mistake, when they talk of their own actions; many of his transactions, in money matters, have been opened to your lordships; more will be opened; and surely, my lords, you must be of opinion, that this inordinate longing after gain, this impotence of mind where money was concerned, is a constitutional weakness in the earl of Macclesfield, which has given a tincture to every thing that passed through his hands: your lordships have seen him taking great sums, accepting small ones, taking 5,000*l.* accepting 105*l.* taking for offices in his own gift, for offices in the gift of the crown, taking for admissions, taking for resignations; in this, indeed, he has shewn an impartiality that, on every other account, were highly to be wished in a judge.

My lords, I would not trouble your lordships again after our evidence is examined, and therefore beg leave to say, that the Commons look upon these practices so nearly to concern the welfare of the people they represent, that, notwithstanding the great part they bear in the constitution of this realm, they have thought it indispensably necessary to appear themselves, and demand justice of your lordships; and we do it with the more pleasure, because we are assured, that when the Commons are prosecutors, and your lordships judges, the meanest subject will have justice, and the greatest will not find favour.

And, my lords, considering that the earl of Macclesfield is to be judged by the most august assembly in the world, of which he is himself a member; it is but a suspicious symptom of his confidence in his own integrity, when he lays hold of any subterfuge to avoid your judgment, or endeavours to secure himself against any part of it, by any plea but that of his innocence, and the justice of his cause.

Sir *Thomas Pengelly*, his Majesty's Serjeant. My lords, before the Managers lay before your lordships any evidence upon the particular Articles, there are some things, we apprehend, necessary to be be taken notice of in the Introduction to the Articles, which are not sufficiently admitted by the lord Macclesfield, in his Answer, and wherein we apprehend it will be necessary to give your lordships some satisfaction; and that is relating to his immediate duty as Lord Chancellor, and the obligation he is under of an oath, which is administered to his lordship, and is established by act of parliament. My lords, we think it proper to lay this before your lordships, because the noble lord has forgot it, not only in his Answer, but in his conduct. The oath is established by the statute of the 12th of Rich. 2, which enacts, That the Chancellor, &c. shall not name or make any officer, or minister of the king, for any gift, or brocage, but make all such officers and ministers of the best and most lawful men.

My lords, I beg leave to shew, that this oath is established by act of parliament, and afterwards shew your lordships, that it has been administered to, and taken by the noble lord within the bar. It is the statute of the 12th of Rich. 2, chap. 2, which enjoins this oath to be taken by his lordship.

Mr. *Lutwyche*. My lords, we are not willing

to trouble your lordships with more than is necessary, or to go about to prove those things that are admitted by the Earl's Answer, but where they are not fully admitted in such a manner as they are charged, and with all that advantage that we think we can make of them, we must beg leave to trouble your lordships with the proof of them. My lords, it is admitted by the Answer, that there was an oath of office taken; and it is likewise set forth in the Answer what that oath was; but the Answer goes no farther, and doth not admit any thing as to another oath founded on the statute of the 12th Rich. 2, which hath frequently been taken by the noble lord; we think it therefore necessary to have the statute of Rich. 2, first read, and the oath that is there prescribed, and to shew you that the noble lord within the bar did take that oath several times.

Then the clerk read the statute of 12 Rich. 2, chap. 2, viz.

"Item, It is accorded that the chancellor, treasurer, keeper of the privy-seal, steward of the king's house, the king's chamberlain, clerk of the rolls, the justices of the one bench and of the other, barons of the exchequer, and all other that shall be called to ordain, name, or make justices of peace, sheriffs, escheators, customers, comptrollers, or any other officer or minister of the king, shall be firmly sworn, that they shall not ordain, name, or make justices of peace, sheriff, escheator, customer, comptroller, nor other officer, nor minister of the king, for any gift or brocage, favour or affection; nor that none which pursueth by him, or by other, privily or openly to be in any manner of office, shall be put in the same office, or in any other, but that they make all such officers and ministers of the best and most lawful men, and sufficient to their estimation and knowledge."

Serj. *Pengelly.* We beg leave that Mr. Eyre may be produced and sworn, in order to prove the administration of this oath, and to prove the noble lord's taking it several times.

Mr. *Thomas Eyre* sworn.

Serj. *Pengelly.* My lords, we desire that Mr. Eyre may be asked, Whether he is an officer of the Exchequer, and what that book in his hand is?

Eyre. My lords, this book I have had in my custody ever since I have been in the office. I have been there forty years. This is the book in which the statute of 12 Rich. 2, is entered; and before the privy council name the sheriffs, this statute is read over to them, and then the privy counsellors are all sworn.

Mr. *Lutwyche.* My lords, we desire the oath may be read.

Eyre. There is no oath in the book, it is only the statute.

E. of *Mac.* Will your lordships be pleased that he may speak aloud. He says there is no oath in the book.

Eyre. The statute is read, and as soon as it is read the book is presented to the privy counsellors, and they are sworn.

Serj. *Pengelly.* My lords, we desire he may be asked, Whether he was present at any time when the earl of Macclesfield has taken the oath to perform this statute in the Court of Exchequer?—*Eyre.* Yes, several times.

E. of *Mac.* I beg leave to ask this question in the first place, Is there any oath there in that book?

Eyre. No, nothing but the statute of Richard 2.

E. of *Mac.* Nothing but the statute of Rich. 2.!. What is it you read, or do at that time, when you say the privy counsellors are sworn?

Eyre. As soon as this statute is read, the Bible is presented to the privy counsellors, and they kiss the book.

E. of *Mac.* Is there any one word said to them, or by them?

Eyre. No; the statute is read over, and the privy counsellors kiss the book.

Serj. *Pengelly.* My lords, we desire he may read it.

E. of *Mac.* My lords, I desire that he may read the very words in the book, as he reads them in the Exchequer.

[Mr. *Eyre* reads the statute.]

"Anno xii Richardi Secundi.

"Item, Accorde est et assentez' que le Chancellor et Treasurer Gardein du Privy Seal Senescall' de Hosteil le Roy, Chamberleyn du Roy, Clerke du Rolls, Justices de lune Bank et de lautre, Barons de le Exchequer et touts autres, que Serrount Appelles Dordoigner nomer ou fair Justices de la Peace, Viscounts Escheators, Customers Comptrollers, ou Ascune autre Officer du Roy, ou Ministre, seroit firmement Jurez, et Serementez, quils ne Ordeigne noient ne facent Justices de la Peas, Viscounts Escheators, Customers Comptrollers, ne null autre Officer ne Ministre du Roy, pur null' manner Don' ne Brocage favor n' affection, nique null que par sui par luy ou par autr' en priv' ou en Apert Destre en Ascune manner Office, soit mijs en mesme l' Office, ou en Ascune autr', unque que ils facient touts tiels Officers et Ministers de le pluis Bon et Loyals et les pluis sufficients a lour essient et lour Conscience."

E. of *Mac.* Those, you say, are the very words you read at that time when the sheriffs are nominated in the Court of Exchequer?

Eyre. Yes.

E. of *Mac.* I suppose you read in that very manner?—*Eyre.* Yes.

E. of *Mac.* Do you say any one syllable more?—*Eyre.* No.

E. of *Mac.* In the next place, I desire he may tell your lordships what it is that the officer does at this time?

Eyre. He carries the book to all the privy counsellors, and they kiss it.

E. of *Mac.* Does he not carry it to the judges too?

Eyre. Yes, every one present kisses the book.

E. of *Mac.* Does he say any thing to them?

Eyre. No.

E. of *Mac.* You say he doth not say any thing to them?—*Eyre.* No, nothing at all.

Serj. *Pengelly.* My lords, we desire that Mr. Eyre may be asked, whether, during his time, this hath not been the usual method of swearing the lords of the privy council?

Eyre. Yes, my lords, it has.

Mr. *Lutwyche.* My lords, it seems to be a question whether this is swearing at all. Therefore the question I desire may be asked this witness, is, what book it is they kiss?

Eyre. My lords, it is the Bible.

Mr. *Lutwyche.* I desire he may be asked, whether this hath not been taken to be swearing them to do what is commanded by this statute?

Serj. *Probyn.* My lords, we beg leave to object to that question. We apprehend the witness is only called to give evidence as to the fact, and not to state his reasons and constructions of fact.

Mr. *Lutwyche.* My lords, I beg leave then to ask a question that I hope they won't object to: Whether or no this is not the manner of swearing the lords, upon the nomination of sheriffs in the Court of Exchequer?

Serj. *Probyn.* My lords, we humbly beg leave to object to that question: we apprehend, that centers in the same thing with the former. The witness has already given your lordships an account of all that is said and all that is done when this act of parliament is produced. He tells your lordships the act of parliament is read; they kiss the book; nothing is asked of them, nor is any thing answered: and yet the gentleman is pleased to ask, whether this is calling a swearing? The witness has given his evidence, your lordships will determine whether it be a swearing or no.

Mr. *Lutwyche.* My lords, I desire he may be asked, whether this kissing the Bible upon the reading this act, is not usually done at the time of appointing the sheriffs?

Eyre. As soon as ever the act is read over, the privy counsellors kiss the Bible.

Serj. *Pengelly.* My lords, I desire it may be asked, whether they proceed to name or appoint any sheriffs before they kiss the book in this manner?—*Eyre.* No, they do not.

Serj. *Pengelly.* My lords, we shall rest this matter here.

Lord *Lechmere.* My lords, I would be glad if this question might be asked the witness; Whether there is any entry or memorandum made upon record in the Court of Exchequer, of any oath taken by the privy-counsellors on this occasion?—*Eyre.* No, there is not.

Mr. *West.* We submit this matter to your lordships: this statute prescribes, that an oath shall be particularly taken; the fact has been stated by the witness: and whether it does not amount to the proof of an oath, that they will comply with that act of parliament, we leave to your lordships' judgment.

Serj. *Pengelly.* We shall leave this evidence to your lordships, and submit it to your determination, whether this noble Earl can excuse himself from this obligation to this act of parliament, as an oath? It is very probable, by his future conduct, he might be of opinion, that there was no obligation of any act or oath upon him: but upon the evidence given, we shall submit this fact: and shall next proceed to call some witnesses to give an account of the nature of the offices of the Masters in Chancery, who are admitted by the noble lord within the bar. We shall produce the oath which is administered to every Master in Chancery upon his admission: then we shall shew the commissions from Edw. the 6th's time, and so from time to time, to this day; wherein the Masters in Chancery are joined with my lords the judges to hear and determine causes in the absence of my Lord Chancellor; to punish contempts, to execute and administer a jurisdiction in that Court. The particular oath very little varies from the oath administered to the Lord Chancellor, which, in his lordship's Answer, is set out at large. However, we shall now beg leave to produce the oath: and to that purpose, we desire Mr. Pynsent, the deputy-clerk of the crown in Chancery, may be examined, and he will produce the oath before your lordships.

Mr. *Pynsent* sworn.

Serj. *Pengelly.* Sir, will you produce, before the Lords, the oath administered to the Masters in Chancery, upon their admission to their offices?

Com. Serj. My lords, we hope he shall give an account, whether he hath seen the oath taken, and hath administered it?

Pynsent. Yes, my lords, I have seen the oath taken, and have administered it myself. [Reads the Oath.]

Sacru'm Magistrorum Cancellarie.

'Ye shall swear that well and trulie ye shall 'serve the kinge our sovereign lord, and his 'people, in the office of one of the Maisters of 'his Chauncerye, to the whiche ye be called: 'ye shall not assent, ne procure the dishery-'taunce, ne perpetual damage of the kinge, to 'your power; ne fraude, ye shall doe or cause 'to be made wrongfullye to anye of his people, 'ne in any thinge that touchethe the seale: 'and lawfullye ye shall counsail the thinges 'that touchethe the kinge, when ye shall be 'thereunto required. And the counsayll that 'ye shall geve touching him, ye shall not dis-'close. And yf ye know anye thinge of the 'disherytaunce or damage of the kinge, or 'fraude to be made upon anye thinge that 'touchethe the keeping of the seale: ye shall 'put your lawfull power it to redresse and 'amende; and yf that ye cannot do, ye 'shall advyse the Chauncellor, or Lorde-Keeper 'of the seale, or other whiche may that amende, 'to your power. As God you helpe, and by 'the content of this boke.'

Serj. *Pengelly.* My lords, there will be di-

rections given to lay a copy of this oath, as well as copies of other records, upon your lordships' table.

The next evidence we shall produce, are commissions beginning in the time of Edward 6, to this time, granted to Masters, appointing them to hear causes, &c. The first commission we shall produce, is dated the 9th of October, the 4th of Edward 6. My lords, we desire that Mr. Paxton may be sworn, who has copies of these commissions, and has examined them with the records.

Mr. *Ralph Paxton* sworn.

Serj. *Pengelly.* My lords, we desire that he may be asked, whether the copies in his hand are true copies, and where they were examined?

L. C. J. *King.* Are they true copies, and where did you examine them?

Paxton. My lords, they are true copies. I examined them in several places. I must look upon each of them, and then I shall tell your lordships where I examined them. I examined some at the Rolls, some at the Petty-bag-office, and some at the Report-office.

L. C. J. *King.* Did you examine them all there?—*Paxton.* I did.

Serj. *Pengelly.* Are they true copies?

Paxton. I believe they are, I took a great deal of care and pains in examining of them.

Serj. *Pengelly.* My lords, we desire that these copies may be read.

Mr. *Strange.* Are they upon stamps?

Paxton. Yes, Sir, with a double sixpenny stamp.

Serj. *Pengelly.* My lords, it seems they are stampt; since they make an objection of that nature, we desire they may be read.

[*Clerk* reads.]

"Sexta pars Pat' de Anno Regni Regis Edri Sexti quarto.

"Rex &c Dilcis et fidelibus Consiliariis Suis Rbto Southwell Militi Custodi ac Magro Rotulorum Cancellar' nre Willo Portman Militi uni Justic' nrorum ad Plita coram Nob' tenend' assign' Jacobo Hales Militi uni Justic' nrorum de Banco Rico Reade Militi et Johi Tregonwell Aro Magris Cancellar' nre predce Ac Dilcis Sibi Johi Olyver Clico Willo Cooke Aro Johi Croke Aro et Anthonio Bellassis Clico Magris ejusdem Cancellar' nre Saltm. Quia Predilcus et fidelis Consiliarius nr' Ricus Riche Miles Dus Riche Cancellar' nr' Angl' adeo Corporis invalitudine ad presens laborat qd ad ea que in Cur' Cancellar' nre in causis et materiis int' diversos ligeos et Subditos nros ibidem pendent' tractand' audiend' discuciend' et terminand' Sint et fieri debeant ad presens pro tempore non Sufficiat Considerantes igitur ipm ad Saltm cicius posse restitui Si ab arduis negociis nris et detminacoe causarum in Cur' Cancellar' nre penden' ad tempus abstineat Et Volentes nichilominus interim in ejusdem Cancellarii nri absencia omibus et Singulis ligeis et subditis nris quibuscumq; matias suas in Cur' Cancellar' nre predce prosequentibus plenam et celerem Justiciam exhiberi Ac de fidelitatibus et providis circumspeccoibus vris plenius Confidentes Assignavimus Vos octo Septem Sex quinq; quatuor et tres vrm quorum vos prefat' Robte Wille Porteman Jacobe Hales Johes Olyver et Johes Croke unu' esse Volumus Ac tenore presenciu' Damus Vob' octo Septem sex quinq; quatuor et tribus vrm quorum aliquem vrm Vos prefat' Robte Wille Porteman Jacobe Hale, Johes Olyver et Johes Croke unu' esse Volumus plenam potestatem et auctoritatem audiend' et examinand' quascumq; materias causas et peticoes coram Nob' in Cancellar' nra int' quoscumq; ligeos et Subditos nros tunc pendent' et impostorum ibidem exhibend' et penden' et easdem matias causas et peticoes juxta Sanas discrecoes vras finalit' timnand' et debit' execuoi demandand' partesq; in matijs Sive causis vel peticoibus illis noitas et Specificatas ac testes et alios quoscunq; quos Vob' fore videbitur evocand' quociens expedire videritis coram Vob' octo Septem Sex quinq; quatuor vel tribus vrm quorum aliquem vrum vos prefate Robte Wille Portman Jacobe Hales Johes Olyver et Johes Croke unu' esse Volumus evocand' ac ipos et eorum quemlt debite examinari compellend' diesq; productorios imponend' et assignand' processusq; quoscumq; in ea parte necessarios concedend' et fieri faciend' contemptus etiam quoscumq; ibidem comiss' Sive perpetratos debite castigand' et puniend' cetaq; omia et Singula faciend' et exequend' que circa premissa necessaria fuerint Seu quomodolit oportuna Et ideo Vob' Mandamus qd circa premissa diligent' intendatis ac ea fac' et exequamini cum effcu Mandamus etiam tenore presenciu' omibus et Singulis Officiariis et Ministris nris Cur' nre predce qd Vob' octo Septem Sex quinq; quatuor et tribus vrm quorum aliquem vrm Vos prefate Robte Wille Porteman Jacobe Johes Oliver et Johes Croke Semper unu' esse Volumus in execucoe premissorum diligent' intendant prout decet Volumus etiam et per presentes Concedimus quod omia et Singula judicia Sive finalia decreta per Vos octo Septem Sex quinq; quatuor vel tres vrm quorum aliquem vrm Vos prefate Robte Wille Porteman Jacobe Johes Olyver et Johes Crooke unu' esse Volumus Semper hmoi causis Sive materijs reddend' Sive fiend' Sint et esse debeant tanti et consimilis valoris effcus efficacie roboris et virtutis ac si per Cancellariu' nrm Angl' et Cur' Cancellar' predce reddit' Sive reddend' forent Proviso Semper qd omia et Singula hujusmodi judicia Sive finalia Decreta per Vos octo Septem Sex quinq; quatuor vel tres vrm quorum aliquem vrm Vos prefate Robte Wille Porteman Jacobe Johes Olyver at Johes Croke unu' esse Volumus virtute presenciu' reddend' Sive fiend' manibus vris octo Septem Sex quinq; quatuor vel tres vrm quorum aliquem vrm Vos prefate Robte Wille Porteman Jacobe Johes Olyver et Johes Croke unu' esse Volumus Subscribantur et consignentur et Superinde eadem judicia Sive decreta prefat' Cancellar'

nro presententur et libentur ut idem Cancellar' nr' antequam irrotulentur eadem Similit' manu sua consignet In cujus rei testimoniu' has Lras nras fieri fecimus Patentes usq; ultimu' diem Novembr' proper' futur' duratur' Si non intrim per alias Lras nras Patentes huic Comissioni Supersederi decreverimus T. R. apud Westm' nono die Octobr'

" Per ipm' Regem Concordat' cum Recordo et Examinat' per me WM. ROOKE."

Serj. *Pengelly.* We have several others of the same nature, which we have proved, and shall not trouble your lordships to read them. We shall beg leave to lay them on your lordships' table. We shall now desire to read some later commissions; some granted when the noble lord within the bar had the custody of the seals himself.

Earl of *Macclesfield.* If your lordships please, the date of that may be read.

[*Clerk* reads.]

" Georgius Dei Gra' Magnæ Britanniæ Franciæ et Hibniæ Rex fidei defensor &c. Prædilecto et fideli Consiliario nro Josepho Jekyll Mil' Magro Rotlorum Cur' Canc' nre ac Dilcis' et fidelibus nris Littleton Powys Mil' un' Justiciar' nrorum ad plita coram nobis tenend' assign' Johi Blencow Mil' un' Justiciar' nrorum de Banco Robto Tracy Ar' al' Justiciar' nrorum de Banco Robto Price Ar' un' Baron' Sccij. nri Johi Smith Ar' al' Baron' Sccij. nri Robto Dormer Ar' un' Justiciar' nrorum de Banco Robto Eyre Mil' un' Justiciar' nrorum ad plita coram nobis tenend' assign' Johi Pratt Mil' al' Justiciar' nrorum ad plita coram nobis tenend' assign' Jacobo Mountagu Mil' un' Baron' Sccij nri Johi Fortescue Aland Mil' un' Baron' Sccij nri Thome Gery Mil' Willo Rogers Johi Hiccocks Willo Fellows Jacobo Meller Johi Orlebar Fleetwood Dormer Samueli Browning Robto Holford Henrico Lovibond et Johi Bennet Aris saltm Quia predileet' et fidel' Consiliar' nostr' Thomas Doms Parker Cancellar' nostr' magne Britannie aris arduis negotiis ex Mandato nro continue attendens in eisdm adeo versatur quod continue attendere non potest ea que in Causis et materiis inter diversos ligeos et subditos nros ac alios in Cur' nra Cancellar' penden' agen' tractand' audiend' expediend' discutiend' et terminand' sint et fieri debent Nos premissa Considerantes volentesq; eibus et singulis ligeis nris ac aliis quascunq; materias suas in eadm' Cur' Cancellar' prosequen' sive prosecutur' plenam et celerem Justicium exhiberi tam in absentia quam in presentia predict' Cancellar' nostr' Magn' Britann' ac de fidelitate et providis circumspeciobus vris in hac parte plumu' confidente assignavimus vos ac tenore prentium Damus vob' et aliquibus tribus vel plur' vrm Quorum prefat' Josephum Jekyll Littleton Powys Jobem Blencoe Robtum Tracy Robtum Price Johem Smith Robtum Dormer Robtum Eyre Johem Prat Jacobum Mountagu et Johem Fortescue Aland unum esse volumus in absentia dict' Cancellar' nostr' Magnæ Britanniæ plen' prefat' et auctat' audiend' et examinand' quascunque materias Causas et petitiones coram nobis in dca Cancellar' nra inter quoscunque ligeos et subditos aut alios quoscunque nunc penden' aut Imposter' ibm exhibend' et penden' materias Causas et peticones juxta sanas discretiones vras vel trium vrm Quorum prefat' Josephum Jekyll Littleton Powys Johem Blencowe Robtum Tracy Robtum Price Johem Smith Robtum Dormer Robtum Eyre Johem Pratt Jacobum Mountagu et Johem Fortescue Aland unum esse volumus finaliter terminand' et debit' execution' demand-and' Partesq; in materiis causis seu petitionibus illis nominat' et significat' ac Testes et alios quoscunq; quos vobis vel tribus vrm (ut pred' est) fore videbitur evocand' quoties expedire videritis coram vobis vel tribus vrm (ut pred' est) evocand' Ac ipsos et eorum quemlibet debite examinari diesq; productiores imponend' et assignand' processusq; quoscunq; in ea parte necessar' concedend' ac fieri facienu' Contemptus etiam quoscunq; comiss' sive perpetrat' debite castigand' et puniend' ceteraq; oia et singla faciend' et exequend' que circa premissa necessar' fuerint seu quomodolibet opportuna Et ideo vobis mandamus qd circa premissa diligent' intendatis et ea fat' exequamini cum effu Mandamus etiam tenore prentium Officiar' et Ministr' Cur' nre Canc' pred' qd vobis vel tribus vrm (ut pred' est) in execuc' premissorum diligenter intendant prout decet Volumus etiam ac per prentes concedimus quod oia et singula Judicia sive finalia decreta ac Ordines per vos aut tres vrum ut præd' est super hum' causis sive materijs ac peticioibus ut prefertur reddend' sive fiend' sint et esse debeant tanti et consilis valor' effect' efficatie roboris et virtute Ac si per præd' Cancellar' nostr' Magnæ Britanniæ et Cur' Cancellar' nre præd' reddit' sive reddend' forent Proviso tamen quod oia et singula Judicia sive finalia decreta per vos vel tres vrm ut præd' est virtute prentium modo et forma ut prædicitur reddend' sive fiend' Manibus vris vel trium vrm Quorum prefat' Josephum Jekyll Littleton Powys Johem Blencowe Robtum Tracy Robtum Price Johem Smith Robtum Dormer Robtum Eyre Johem Pratt Jacobum Mountagu et Johem Fortescue Aland unum esse volumus subscribentur et consignentur et superinde eadem Judicia sive finalia decreta prefat' Cancellar' nostr' Magn' Britan' presententur et libentur Quodq; null' eorundem Judicior' sive final' decretor' irrotulentur aut quovismodo execut' sint antequam idem Cancellar' nostr' Magn' Britann' ea manu sua propria siliter configuet Et quod he lre nre Patentes durabunt et permanebunt in pleno robore et effect' donec aliter per alias lras nrs Patentes huic Commissioni supersederi mandat' foret aut prædict' Cancellar' nostr' Magn' Britann' in plena Cur' determinari decret' et irrotulat' erit In cujus rei Testimoniu' has lras nras fieri fecimus Patentes Teste meipso apud Westm' duodecimo die Maij Anno Regni nostri quarto

Per ipsum Regem WRIGHTE."

Serj. *Pengelly.* We desire that there may be another commission read, dated the 20th of January, the 8th of the king.

[*Clerk reads.*]

"Georgius Dei Gratia Magnæ Britanniæ, Franciæ, et Hiberniæ Rex, fidei Defensor, &c. Prædilecto et fidel' Consiliar' nro Josepho Jekyll Mil' Magro Rotulor' Cur' Cancellar' nre ac Dilcis et Fidelibus nris Littleton Powys Mil' un' Justic' nroru' ad plita coram nobis tenend' assign' Johi Blencow Mil' un' Justic' nrorum de Banco Robto Tracey Ar' al' Justic' nrorum de Banco Robto Price Ar' un' Baron' Sccij nri Robto Dormer Ar' un' Justic' nrorum de Banco Robto Eyre Mil' un' Justic' nrorum ad plita coram nob' tenend' assign' Jacobo Montagu Mil' un' Baron' Sccij nri Johi Fortescue Aland Mil' un' Justic' nrorum ad plita coram nob' tenend' assign' Franco Page Mil' un' Baron' Sccij nri Johi Hiccocks, Willo Fellowes, Robto Holford, Henco Lovibond, Johi Bennet, Rico Godfrey, Jacobo Lightboun, Johi Borret, Edro Conway, Henco Edwards, et Willo Kynaston, Ar' salum. Quia Charissimus Consanguineus et Consiliar' noster Thomas Comes de Macclesfield Cancellar' noster Magnæ Britanniæ nostris arduis negotiis ex Mandato nostro continue attendens in eisdem adeo versatur quod continue attendere non potest ea que in Causis et Materiis inter diversos ligeos et subditos nostros ac alios in Cur' nostra' Cancellar' penden' agen' tractand' audiend' expediend' discutiend' et terminand' sint et fieri debent nos premissa considerantes volentesq; omnibus et singulis ligeis nostris ac aliis quascunq; materias suas in eadem Cur' Cancellar' prosequend' sive prosecutur' plenam et celerem Justiciam exhiberi tam in absentia quam in præsentia præd' Cancellar' nostri Magnæ Britanniæ ac de fidelitate providis circumspectionibus vris in hac parte plurimum Confidentes Assignavimus vos ac tenore present' Damus vob' et aliquibus tribus vel plur' vrm' Quorum prefat' Josephum Jekyl Littleton Powys Johem Blencowe Robtum Tracey Robtum Price Robtum Dormer Robtum Eyre Jacobum Montagu Johem Fortescue Aland et Francum Page unum esse Volumus in absentia dicti Cancellar' nostri Magnæ Britanniæ plen' potestat' et Authoritat' audiend' et examinand' quascunq; materias causas et petitiones coram nob' in dicta Cancellar' nostra inter quoscunq; ligeos et subditos aut alios quoscunq; nunc penden' aut imposter' ibidem exhibend' et penden' et easdem materias causas et petitiones juxta sanas discretiones vras vel triu' vrm' Quorum prefat' Josephum Jekyl Littleton Powys Johem Blencowe Robtum Tracey Robtum Price Robtum Dormer Robtum Eyre Jacobum Montagu Johem Fortescue Aland et Francum Page unum esse Volumus finalit' terminand' et debit' execution' demandand' partesq; in materiis causis seu petitionibus illis noiat' et specificat' ac testes et alios quoscunq; quos vob' vel tribus vrm' (ut præd' est) fore videbitur evocand' quoties expedire videritis coram vob' vel tribus vrm' (ut præd' est) evocand' ac ipsos et eorum quemlibet debite examinari compellend' diesq; productiores imponend' et assignand' processusq; quoscunq; in ea parte necessar' concedend' ac fieri faciend' contemptus etiam quoscunq; comiss' sive perpet' debit' castigand' et puniend' ceteraq; oia et singula faciend' et exequend' qua circa præmissa necessar' fuerint seu quomodo libet opportuna. Et ideo vob' mandamus quod circa præmissa diligent' intendatis et ea fac' et exequamini cum effectu. Mandamus etiam tenore presentiu' officiar' et ministr' Cur' nostre Cancellar' præd' quod vob' vel tribus vrm' (ut præd' est) in executione præmissorum diligent' intendant prout decet Volumus etiam et per presentes concedimus quodoia et singula judicia sive final' decreta ac ordines per vos et tres vrm' (ut præd' est) super hum' causis sive materiis, et petitionibus ut prefert' reddend' sive fiend' sint et esse debeant tanti et consilis valor' effectus efficacie roboris et virtutis ac si per præd' effectus Cancellar' nostr' Magnæ Britanniæ et Cur' Cancellar' nostre præd' reddit' sive reddend' forent. Proviso tamen quod oia et singula judicia sive finalia decreta per vos vel tres vrm (ut præd' est) virtute present' modo et formatur predicitur reddend' sive fiend' manibus vris vel triu' vrm' Quorum prefat' Josephum Jekyl Littleton Powys Johem Blencowe Robtum Tracey Robtum Price Robtum Dormer Robtum Eyre Jacobum Montagu Johem Fortescue Aland et Francum Page unum esse Volumus subscribantur et consignentur et superinde eadem judicia sive final' decreta prefat Cancellar' nostro Magnæ Britanniæ presententur et libentur Quodq; nulla eorundem judiciorum sive final' decretorum irrotulentur aut quovis modo execut' sint antequam idem Cancellar' noster Magnæ Britanniæ ea manu sua propria silit' consignet Et quod he litere nostre paten' durabunt et permanebunt in pleno robore et effectu, donec alit' per al' literas nostras patentes huic Commission' supersederi mandat' foret aut per dictum Cancellar' nostrum Magnæ Britanniæ in plena Cur' determinari decret' et irrotulat' erit. In cujus rei testimonium has literas nostras fieri fecimus patentes Teste meipso apud Westm' Vicesimo die Januarij Anno rni' nri' Octovo. Per ipsum Regem WRIGHTE."

Serj. *Pengelly.* My lords, we don't apprehend it necessary to read all the others over; we shall deliver them in; unless it be desired by the noble lord. My lords, we now beg leave to call Mr. Meller, who hath executed the office of a Master in Chancery for several years. He will give your lordships some account of the nature and of the manner of execution of that office, in support of what the Commons have charged.

Mr. *John Meller* sworn.

Mr. *Lutwyche.* My lords, we desire Mr. Meller may be asked, Whether he hath executed the office of a Master in Chancery, and how long, and what is the nature of that office?

L. C. J. *King.* Sir, you hear the question.

Meller. My lords, according to the best of my remembrance, I was admitted a Master in the latter end of the year 1703, and continued so till July 1720. The general nature of the office is, to digest and sum up those matters which are ordered upon hearing to be referred to us, by way of report: that is the general business. There is a further business, when bills of costs are to be taxed, they are taxed and adjusted by us what is to be paid. I don't recollect any more particular business.

Mr. *Lutwyche.* I desire he may be asked, for whose service and use those reports are made?

Meller. Those reports are made for the use of the suitors of the Court. It is to state the facts that the Lord Chancellor has referred to the Master, that are too tedious for the Court to look into.

Mr. *Lutwyche.* To whom are they returned and directed?

Meller. These reports are made to the Court, to the Lord Chancellor, or the Master of the Rolls. They have these reports, and make a final order upon them.

E. of *Macclesfield.* I desire he may be asked, when reports of the several matters referred to the Master to consider of, which would take up too much time of the Court to settle, are made, whether those reports of the Master are at all conclusive? Or what is the method in case the parties don't acquiesce?

Meller. My lords, the report is only to state the facts to the Court; and till the report is confirmed by the Court, what the Master hath reported has no effect. So that I apprehend it is only to lay the state of the matter before the Court: if what the Master reports seems agreeable to the Court, then they confirm it; if not, they vary it, or sometimes send it back again to the Master for his further consideration.

Com. Serj. My lords, I desire that Mr. Meller may inform your lordships, if any person apprehends the facts mistaken, whether they have not an opportunity of rectifying this report of the Master?

Meller. My lords, so far as I apprehend, the rule of the Court is this; when a report is drawn up, the parties on both sides have liberty to object to that report before the Master; and whatever they put in by way of objection before the Master, they may speak to those several points when the report comes before the Court.

Serj. *Probyn.* What are the matters that are generally referred to the Masters by the Court?

Meller. The chief matters are the stating of accounts.

Mr. *Strange.* My lords, I beg leave to ask the witness this question: whether any matters of judgment are at any time referred by the Court to the Master?

Meller. The nature of reports requires some conclusion upon them, to be given by the Masters according to the best of their opinion. But the Court gives a sanction to those reports.

Mr. *Strange.* Whether, in any one instance, the judgment of the Master is final to the suitor?

Meller. I will recollect, and give your lordships the best account that I can remember as to that. I think, when a Master has taxed a bill of costs, there is a Subpœna taken out for the costs, upon the Master's report, without going to the Court. I am not sure.

Com. Serj. When exceptions are taken to a Master's report, doth the Master or the Court pass a judgment upon them?

Meller. The method is this; when a report is drawn up, a copy is given to both sides, and each side puts in such objections to it as they think proper; the Master goes through those objections, and having gone through them, he forms an opinion upon the whole. Then it goes to the Court, and the parties have liberty to go upon those objections before the Court, who finally determine.

Com. Serj. I desire, my lords, that Mr. Meller may acquaint your lordships, who presided in the Court when he came in?

Meller. My lord Cowper, I take it, was then Chancellor; it was in the year 1708, or the beginning of 1709.

Com. Serj. We desire to know, whether he gave any money when he came into the office, and to whom?

Mr. *Plummer.* We have called this gentleman to give an account of the nature of the office of a Master in Chancery, we are not come to that matter of giving of money; we submit, whether it is necessary to enter into that question now?

Serj. *Probyn.* If this gentleman is to be called again, we beg leave to reserve that question till they come to that part of the Charge.

Mr. *Plummer.* My lords, I have another question to ask: it has been asked, whether the determination of a Master in Chancery is final? I desire it may be asked, if the Master in Chancery makes a report, to which there is no exception, whether the decree in Chancery is not according to that report?

Meller. I take it, after the Master has made a report, and there is no exception to it, that report is first confirmed *nisi*, and then it is confirmed absolutely upon a second motion.

Mr. *Lutwyche.* My lords, I desire he may be asked another question: if there be a reference concerning an answer which is alleged insufficient, and the Master reports it insufficient, whether it is not final and conclusive, unless the party takes exception to such report?

Meller. Unless the party takes exception, it is looked upon as final: for then he submits and puts in a farther answer, and then the end of referring it to the Master is answered: but the party may except if he pleases.

Mr. *Lutwyche.* As to the taxing of costs; whether when the costs are taxed to a particular sum, that is not final and conclusive, unless the party makes application to the Court?

Meller. I apprehend I did answer that before. The Master, after he has taxed the bill of costs, the clerk in court, as I take it, makes

out Subpœnas for costs of course: but I cannot speak to that so well as the clerks in court; but I take that to be the practice.

Earl of *Abingdon*. I would be glad to be informed in this point: supposing a sum of money to be laid out upon a purchase or mortgage, whether the titles of those estates are not commonly referred to a Master, and whether the Master does not judge of, or determine those titles?

Meller. In that case, I can only speak to what came before myself. When there was an order to put money out upon a mortgage, the first step I took was, I sent the title-deeds to some able counsel; when I had his opinion, I used the best of my judgment to inform myself: if I found no objection, then I thought I was obliged to allow the security, and accordingly made my report of allowance; and then, as Master, set my hand to the side of the deed.

Mr. *Lutwyche*. Another question I would beg leave to ask, though it is well known, yet it is fit it should appear from the witness, and that is, whether the Masters don't sit upon the bench with my Lord Chancellor, in open court in Westminster-hall, every term?

Meller. My lords, in Westminster-hall three Masters are required to attend the Chancellor; at his own house two; and the like at the Rolls.

Com. Serj. If the gentlemen have done, we beg leave to ask one question: whether, even in the case of costs, if the parties are dissatisfied, application is not made to the Court (though not by way of exception, yet by motion) to refer it back again?

Meller. In the case of costs, it hath been a very rare thing to apply to the Court. Some instances there have been, I believe, but few.

Com. Serj. I beg leave the Master would inform your lordships, whether in the case of titles, if there happens any difference in the opinion of the parties, they apply to the Court, or are concluded by the opinion of the Master?

Meller. I never knew, during the time that I was in the office, that any title was ever contested before the Court; I mean in my own case.

Com. Serj. Whether or no he knows any case where the parties have differed in opinion about a title, that the Master's opinion has concluded the parties?

Meller. I don't know, while I was in the office, that there was ever any objection before me in the case of a title.

Mr. *Robins*. Give me leave to ask one question: you say three Masters sit with my Lord Chancellor at Westminster, two at his own house: I desire to know what they do there; whether they sit as assistants?

Meller. My lords, I don't know that ever their advice was asked.

Dr. *Sayer*. My lords, I would ask, whether they ever interposed by way of judgment, or took upon them to act as judges?

Meller. My lords, I think not; I don't remember any instance of it.

Mr. *Strange*. My lords, I desire he may be asked, whether what the Master ever does is confirmed of course, or is there not a motion for that purpose?

Meller. I thought I mentioned that before: I shall repeat it again. There is first a motion to confirm *nisi causa*; and upon the second motion, unless there is cause shewn, it is confirmed.

Mr. *Strange*. My lords, I desire he may be asked, if there is not an affidavit of service of the first order?

Meller. I believe there is; but that is the business of the solicitor.

Mr. *Strange*. My lords, I beg leave he may be asked one question more, whether there is not a certificate also from the Register that no cause is shewn?

Meller. My lords, I can't speak particularly as to that; it is a business that does not lie before the Master in his office; I believe in many cases the Register certifies.

Dr. *Sayer*. We will trouble your lordships with no more questions except this one, that is, whether we shall see Mr. Meller again? For if we are to take our leave of him now, we should offer some other questions before he departs.

Serj. *Pengelly*. My lords, I can't tell whether the Managers will have any occasion to call him again; but he shall stay here to attend, in order to be called when he is wanted, either by the noble lord, or any other person. We don't think fit to trouble your lordships with any other evidence as to that matter. Their authority in Court appears by the commissions that have been produced. It is not said in the Introduction to the Articles, that the Masters are to controul the Lord Chancellor, but to assist him in the administration and execution of justice, of which we think we have produced the fullest proof; and beg leave to proceed to another part of our evidence, that which relates to the profits of the office of Lord Chancellor. The ordinary profits, not to mention the extraordinary ones, which have been made by the noble lord within the bar, I think may be computed to amount to 8,000*l*. a year, or thereabouts; so that there is no occasion to use other means. But not to enter into them all, we shall only beg leave to call one witness to prove one gross annual sum of 1,500*l*. a year paid out of the Hanaper office. My lords, we desire Mr. Pynsent may be asked, for what annual sum he accompted to the late Lord Chancellor out of the Hanaper-office, during his time of being in the said office; how much he has paid him?

Com. Serj. My lords, I beg leave to oppose that question. I believe there is no payment from the crown but what is always upon record; and therefore that being a matter of a higher nature, they ought to produce those records, and not examine witnesses *viva voce* to it.

E. of *Macclesfield*. I believe this gentleman is right in his objection in point of law. But however, as this person is the proper officer,

and I believe an honest man, I will not insist upon the nicety.

Serj. *Pengelly.* We desire to know how much a year he has paid to the impeached lord out of the Hanaper-office?

Pynsent. I have no voucher with me; but as far as I can charge my memory, it is about 1*l*. or 1,400*l*. a year.

E. of *Macclesfield.* If he had had his memorandum with him, I was willing he should give your lordships an account of that matter; but if he speaks only by an uncertain memory of it, I hope I shall not be bound by it, especially when he himself assigns the want of his vouchers as a reason why he cannot be certain.

Serj. *Pengelly.* My lords, we desire he may be asked, how much he can take upon him to say he has paid? It is not material whether by warrant or special direction: It is only a question of fact, whether he can be certain to a sum, either 1*l*. or 1,400*l*. a year, or other sum?

Pynsent. I can say above 1,000*l*. a year. If I had my vouchers here I could be more certain.

Com. Serj. The noble lord waved the objection, upon a supposition that he had a certain account. As he has not, I must beg leave to insist upon the objection that I made against the legality of the proof.

Mr. *Lutwyche.* We only ask in this case to a fact, what he paid to him; and I will add this further, for what time?

Serj. *Probyn.* My lords, we must insist upon our objection. The witness says he is uncertain how much he has paid: he says he has vouchers, which will shew the particular sums he has paid; and since it is in their power to produce those vouchers, we must submit it that they shall produce the best evidence they have in their power to give, and that the receipts and vouchers shall be produced.

Com. Serj. The Answer of the hon. Managers to the objection is no answer. They say it is a matter of fact; but that matter of fact is matter of record; it must be proved by the record, because the law expects the highest proof to be made that can be, even in trifling cases, and much more when the honour of so great a lord is in question.

Serj. *Probyn.* I desire to know if there is not constantly a receipt given upon every payment?

Pynsent. Yes; and those receipts are carried into the Auditors' office, and there they rest.

Serj. *Probyn.* Then they can be come at?

Pynsent. Yes, they are carried in yearly.

Sol. Gen. My lords, I did not expect this objection: but we must submit it, whether there is any foundation for it. If the matter of record be insisted on, only with respect to the receipt given, there is no need of it: better evidence cannot be given to prove payment, than the man who paid it. The common evidence to prove payment of money, is to produce a man to swear that he paid that money. No better evidence can be given; and though a receipt is given, yet when a person proves he paid the money, he need not produce the receipt: it is better evidence than the receipt: a receipt may be given without payment. Therefore we apprehend that the witness's proof of the payment is sufficient to prove this matter of fact.

Com. Serj. I apprehend there is no money either received or issued out by the crown, but what appears by record. It is not only those receipts that is the strength of the objection; but when there are matters uncertain, and the witness says he can't declare what it was, whether upon that foundation your lordships won't expect a certain evidence, not only from the nature of the thing, but from the present circumstances of this case, when the witness declares that he cannot remember it?

Mr. *Strange.* My lords, I wonder to hear it said, that a person who swears to the payment of money is the most certain evidence. He may be mistaken, the receipt cannot. Therefore we must submit it, as they have opened it, whether this is the best evidence?

Mr. *Lutwyche.* My lords, I wonder your lordships should be troubled with any thing of this kind, in order to prove a salary of 1,500*l*. a year belonging to the noble lord's office, when we ask only to the quantum of the sum which he did receive from Mr. Pynsent: the question is, whether we shall be admitted to ask that question? It is admitted that the witness paid the salary: all the question is, what he paid?

E. of *Macclesfield.* My lords, I am sorry your lordships' time should be taken up about a thing of this kind. When the objection was first made by my counsel, which I apprehend is right, I stood up to acquaint your lordships, that I did not insist upon the nicety of it. This gentleman used to pay me money, and I believe he is a very honest gentleman; but when he comes to say he is not sure how much, and they were working him up to a higher pitch, and these gentlemen, for aught I know, or their solicitor, may have the receipts in their pockets, I thought it was then high time to stop them. This gentleman did say it was more than 1,000*l*. My lords, I admit it, I believe it to be 1,100*l*. a year, or thereabouts: if I knew exactly, I would tell it, I never intended to dispute the matter.

Mr. *West.* I would not have your lordships imagine that the Commons are capable of working up a witness. It is unworthy of the Commons of Great Britain, of the gentlemen appointed Managers in their behalf; it is impossible that they should have any view but the truth of the fact, and the justice of the cause. The question asked was only what it was he paid; it was not endeavouring to work him up to any thing. If this was a question relating to the crimes charged upon his lordship, I should not have been so much surprized; but this is only an aggravation contained in the preamble. I think the litigating the point is as great an aggravation, as the proving the payment of the money.

E. of *Macclesfield.* My lords, I did not intend any reflection upon the Commons: nor did I say any thing which amounts to it. I did say the solicitor might have the receipts; I don't know what they have in their hands. The learned gentleman that spoke last says 'tis not a charge, only an aggravation: if it be an aggravation, should it not be proved, and legally proved? But I have been ready to make this matter easy, for I agreed it to be as much as their own witness can with any certainty say it was, and I don't think it to be any aggravation; and therefore told your lordships I believed it might be 1,100*l.* a year, or thereabouts, not being willing to take up any more of your lordships time about it.

Serj. *Pengelly.* My lords, the Managers for the House of Commons do not think it so material whether it be 11 or 1,500*l.* a year. We will take the noble lord's admission: and we apprehend, as it is 1,100*l.* a year, it is a reasonable addition to the salary of his office.

E. of *Macclesfield.* I only would ask this question, Do you remember what the Chancellor's annual salary is?

Pynsent. No, I do not.

E. of *Macclesfield.* That is part of the particular that makes up the 1,100*l.* per annum?

Pynsent. I think it is so.

E. of *Macclesfield.* Is it not 300*l.* per annum?

Pynsent. I think it is thereabouts.

Com. Serj. My lords, I desire he may be asked, whether or no this 1,100*l.* a year hath been usually allowed to the preceding Lords Chancellors?

Pynsent. I take it for granted that it was so.

Serj. *Pengelly.* My lords, we shall now proceed to call our witnesses in support of the Ninth Article, that being a distinct particular, relating to a sum not at all involved in the questions touching the Masters; and, as we apprehend, received by the noble Earl under circumstances of the greatest aggravation that is possible; abusing the royal authority, or that share of it which the noble lord enjoyed at that time when he was one of the Lords Justices. Therefore we give preference to that Article, and desire Mr. Thomas Bennet, whom I see in your lordships' House, may be sworn and examined.

[Mr. *Thomas Bennet* sworn.]

Serj. *Pengelly.* My lords, Mr. Bennet was the person who was possessed of the office of the Clerk of the Custodies, at the time of the resignation of it for the benefit of Mr. Hamersley, who has now a patent. We have the patent here; and if that be read, it will more fully acquaint your lordships with the nature of the office, and then we shall acquaint your lordships with the nature of the transaction.

[The Patent begun to be read.]

"Teste, &c. 5to Septemb' An. 10 Georgii Regis."

Serj. *Pengelly.* Though the noble lord's name be not mentioned in the Patent, yet it is sufficiently known from the date and time of it, that it was when the noble lord was one of the Lords Justices, and had the custody of the seals, and that at that time he affixed the seals to this Patent.

[Then the Patent was begun again to be read.]

E. of *Macclesfield.* My lords, I beg pardon for interrupting; I don't know whether they think it of any particular use to read it through; if not, for saving your lordships' time, I admit that a grant was made of the office to Mr. Hamersley, on the surrender of Mr Bennet.

Serj. *Pengelly.* My lords, as it is necessary to shew the resignation of Mr. Thomas Bennet, so likewise the nature of the office; and therefore, to the end that may be the better seen, we beg leave the Patent may be read.

[*Clerk* reads.]

"Georgius Dei Gratia, Magnæ Britanniæ, Franciæ et Hiberniæ Rex, Fidei Defensor, &c. Omnibus ad quos presentes literæ nostræ pervenerint salutem. Cum nos per Literas nostras Patentes sub Magno Sigillo nostro Magnæ Britanniæ confectas geren' dat' apud Westm' vicesimo die Martii, Anno Regni nostri tertio pro nobis Heredibus et Successoribus nostris dederimus et Concesserimus Dilecto et fideli nostro Thomæ Bennet Armigero Officium Clerici ad Scribend' et Conficiend' omnia et singula Bria de diem clausit extremum, et Mandamus et Commissiones ad inquirend' post mortem et de Ideotis et Lunaticis et ad melius inquirend' inde et supersed' eorundem ac omnia al' Bria et Process' eorund' ac omnia al' Bria de Process' cujuscunque Generis Nominis Naturæ vel Speciei essent vel forent que ante tum de vel nuper in Cur' Wardor' et Libationum aliquor' Predecessor' nostror' antetunc Regum vel Reginar' Angl' per Warrant' ibidem dum eadm' Cur' stetit et fuit in Usu et Vigore fact' et Concess' assignat' vel appunctuat' fuerant, vel fieri concedi assignari vel appunctuari consuerant vel debuerant ac de vel in Cur' nostra Cancellar' vel aliquor' predecessor' nostror' antetunc Regum vel Reginarum Angl' sub Magno Sigillo Angl' impetrat' et persecut' fuerant vel impetrari et prosequi consueverant vel debuerant ac oies et singul' Literæ Paten' de Custod' Corporum omnium Wardor' Idiotor' et Lunaticor' nostror' Hered' et Successor' nostrorum et de Maritag' eorund' Wardor' sub Magno Sigillo Magnæ Britanniæ impetrand' et prosequend' necnon omnia al' Bria Commissiones et process' cujuscunque Generis Nominis Naturæ vel Speciei essent vel forent de vel in Cur' nostra Cancellar' Hered' et Successor' nostrorum sub magno Sigillo nro Magnæ Britanniæ Heredu' vel Successorum nostrorum premissa predicta seu eorum aliqua tangen' vel concernen' fiend' concedend' impetrand' seu prosequend' Habend' tenend' gaudend' et exercend' predictum Officium et omnia et singula premissa predicta superius specificat' prefat'

Thomæ Bennett per seipsum vel per sufficientem Deputat' suum sive Deputatos suos sufficientes a die dat' prereciat' Literarum nostrarum Patentium ad Termin' et pro Termino vitæ naturalis ipsius Thomæ Bennett una cum omnibus predict' prosic' et advantag' ad inde spectan' prout per easdem Literas Paten' (inter al') in eisdem content' relatione inde habita plenius liquet et apparet cumque præfat' Thomas Bennett per quoddam Scriptum suum sub Manu et Sigillo suis sigillat' geren' Dat' nono die Augusti, Anno Regni nostri decimo, ac in Cur' Cancellar' nostra debito modo Irrotlat' Officium et premissa predicta, ac tot' statum jus Titulum et interesse sua in eisdem una cum dictis recitat' Literis nostris Patentibus Cancellarid' in Manus nostras sursum reddiderit. Quam quidem sursum redditionem nos acceptavimus ac per presentes acceptamus Sciatis modo quod nos de Gratia nostra speciali ac ex certa Scientia et mero motu nostris Dedimus et concessimus ac per presentes pro nobis Heredibus et Successoribus nostris Damus et concedimus dilecto et fideli nostro Hugoni Hamersley de Interiori Templo Londin' Armigero dictum Officium Clerici ad scribend' et conficiend' omnia et singula Bria de diem clausit extremum et Mandamus et Commissiones ad inquirend' post mortem et de Idiotis et Lunaticis et ad melius inquirend' inde et supersed' eorund' ac omnia al' Bria et Process' eorund' ac omnia al' Bria et process' cujuscunque Generis Nominis Naturæ vel Speciei sint vel fuerint quæ antehac de vel nuper in Cur' Wardorum et Liberationum aliquorum Predecessorum nostrorum nuper Regum vel Reginarum Angl' per Warrant' ibidem dum eadem Cur' stetit et fuit in Usu et Vigore fact' concess' assignat' vel appuntuat' fuerunt vel fieri concedi assignari vel appunctuari consueverunt vel debuerunt ac de vel in Cur' nostra Cancellar' vel aliquorum Predecessorum nostrorum nuper Regum vel Reginarum Angl' sub Magno Sigillo Angl' impetrat' et prosecut' fuerunt vel impetrari et prosequi consueverunt vel debuerunt ac omnes et singul' Literas Paten' de Custodia Corporum omnium Wardorum Idiotorum et Lunaticorum nostrorum Hæred' et Successor' nostrorum et de Maritag' eorund' Wardor' sub Magno Sigillo Magnæ Britanniæ impetrand' et prosequend' necnon omnia al' Bria Commissiones et process' cujuscunque Generis nomis Naturæ vel Speciei sint vel fuerint de vel in Cur' nostra Cancellar' Heredum et Successorum nostrorum sub Magno Sigillo nostro Magnæ Britanniæ Hered' vel Successorum nostrorum premissa predicta seu eorum aliqua tangen' vel concernen' fiend' concedend' impetrand' seu prosequend' ac ipsum Hugonem Hamersley Clericum et Officiarium nostrum Hered' et Successor' nostrorum ad scribend' et conficiend' omnia et singula predicta Bria Commissiones process' supersed' Literas Paten' ac omnia et singula cætera premissa superius specificat' de vel in dict Cur' Cancellar' nostra ac Hered' et Successor' nostror' imposterum de tempore in tempus concedend' prosequend' seu quovismodo impetrand' Ordinamus, Constituimus, Erigimus et Stabilimus per presentes Habend' Tenend' Utend' Gaudend' Exercend' Fungend' et Administrand' predict' Offic' et omnia et singula premissa predicta superius specificat' præfat' Hugoni Hamersley per seipsum vel per sufficientem Deputatum suum sive Deputatos suos sufficientes a confectione harum literarum nostrarum Patent' ad Terminum et pro Termino Vitæ naturalis ipsius Hugonis Hamersley una cum omnibus et singulis Prod' profic' commoditat' emolument' juribus Privileg' et al' rebus quibuscunque modo vel antehac usitat' pro premissa vel eorum aliqua recept' seu eisdem vel eorum alicui pertinen' inciden' vel incumben' quovismodo adeo plena libere et integre ac in tam amplis modo et forma prout præfat' Thomas Bennett, vel aliquis alius sive aliqui alii predictum Officium et cætera premissa seu eorum aliqu' antehac habentes vel exercentes habens seu exercens habuerunt exercuerunt perceperunt et gavisi fuerunt habuit exercuit percepit et gavisus fuit aut habere exercere percipere aut gaudere debuerunt aut debuit in et pro Exercitio ejusdem Officii et cæterorum premissorum. Et hoc absque computo seu aliquo alio proinde nobis Heredibus vel Successoribus nostris reddend' solvend' vel faciend' Volumus etiam ac per presentes pro nobis Heredibus et Successoribus nostris concedimus præfat' Hugoni Hamersley quod ipse custodiet intrabit et transcribet omnes et singulos Ordines Reportationes et comput' fact' declarat' et perfect' sive faciend' declarand' et perficiend' tangen' vel concernen' dict' Idiot' vel Lunatic' et stat' eorund' vel eorum aliquorum vel alicujus Volumus etiam quod nullus alius Clericus Cancellariæ nostræ Hered' vel Successor' nostror' nec aliquis alius sive aliqui alii cum Scriptur' Confectione seu Compositione predictorum Briorum Commission' process' Literarum Paten' vel cum Custodia Intracone et Transcriptione predict' Ordin' Reportation' et computorum aut al' premisserum aut alicujus eorundem ullo modo se intromittat seu intromittant, sine assensu et consensu ipsius Hugonis Hamersley. Et quod idem Hamersley aut Deputat' suus sive Deputat' sui sufficien' in hac parte assignat' sive assignand' Omnia et singula predicta Bria Commissiones Literas Paten' Ordinationes Certification' Composition' et cætera premissa de vel in dict' Cur' Cancellar' nostra ac Heredum et Successorum nostrorum prosequend' conficiend' impetrand' custodiend' intrand' vel transcribend' scribere conficere custodire intrare et transcribere possint et quilibet eorum possit. In cujus rei Testimonium has Literas nostras fieri fecimus Patentes Testibus Willielmo Archiepiscopo Cantuar' et cæteris Custodibus et Justiciariis Regni nostri apud Westmonasterium quinto Die Septembris, Anno Regni nostri Decimo.

"Per bre' de privato Sigillo, Cocks."

Serj. *Pengelly*. The reading of these letters patents shews, that this office is in the gift of the crown: It likewise shews, that the resignation of Mr. Thomas Bennet was for the

yourself, what was the particular sum Mr. Bennet offered?—*Cottingham.* 1,500 guineas.

Serj. *Probyn.* Did he talk of any less sum?

Cottingham. Not a farthing less; he asked me what was expected; I told him the sum Mr. Kynaston had paid, which was 1,500 guineas; and he never offered a farthing less.

Serj. *Probyn.* We desire, Mr. Cottingham, that you would recollect yourself, and tell us whether he offered 1,000 or 1,500 guineas.

Cottingham. I have recollected, and what he offered to me was 1,500 guineas, and I never heard of a farthing less; I never heard a word of 1,000 guineas.

E. of *Mac.* If your lordships please, I desire Mr. Cottingham may be asked, what condition I was in, in respect to my health, at that time?

Cottingham. The Earl at that time was very ill; Mr. Bennet having pressed to be admitted the first opportunity; I think your lordship fell ill the last day of Easter term, 1723, and I meeting with Dr. Mead, the doctor told me the Earl was in so dangerous a condition, that if his distemper had not a turn, he thought he could not live 24 hours. The doctor and I went and supped together; he bid me to be at the Earl's next morning: I met him there, and he told me the earl's distemper had a turn, and he might get over it: I asked the doctor, telling him there was a business that Mr. Bennet pressed me to do, if it would be safe for the Earl to do it. He told me, if it did not admit much thought and much company it might be done. I told him it would not admit much thought or company; and he said it might be done.

E. of *Mac.* What was the occasion that Mr. Bennet was desired to come alone?

Cottingham. The reason was upon the account of your lordship's indisposition; and for that reason I sent to Mr. Hiccocks for his surrender, because my lord could not see much company.

Mr. *Strange.* I desire to ask you, upon whose importunity it was you asked Dr. Mead this?

Cottingham. I asked it myself; but it was, because Mr. Bennett importuned me so: and I remember this circumstance, when I went to his house, he had something of the jaundice, and looked ill. I asked him, if he was fit to be admitted: I thought Mr. Bennett would not have been so eager, if he did not think the Earl had been dying, and that then he would have waited longer.

Mr. *Plummer.* My lords, if the gentlemen have done, I desire to ask one question; whether, on occasion of these Masters' places being vacant, he took directions from my Lord Chancellor to set a price, or did it of his own head?

Cottingham. I had no directions in this matter; but when any vacancy or alienation happened, and they asked me what compliment I thought would be acceptable, I told them the compliment that had been before made. I spoke it as my own opinion, and without any directions from the Earl.

Serj. *Pengelly.* I desire he may be asked, whether ever he concluded any bargain with any of these Masters, without his lord's approbation?—*Cottingham.* No, I did not.

Mr. *Onslow.* I would ask Mr. Cottingham one question, which, I think, he hath not answered; I ask whether he had not, in general, directions from the Lord Chancellor, to insist upon, or ask any particular prices for these places.

E. of *Mac.* My lords, I am sorry the learned gentlemen do not observe their own rule, in confining their examinations to such Articles as they go upon, those they have a right to ask to, and those only; therefore with humble submission, it is more proper to each Article where they charge me to have insisted upon a price, to ask to that price, than to ask these general questions, whether I did ever direct him to insist upon any price? It is not that I am afraid of the question that is put, but I am afraid of its being made a precedent for giving your lordships a great deal of unnecessary trouble.

Mr. *Onslow.* This is proper to this article, becauses it charges the Earl with insisting upon prices. Therefore I desire to know, whether the Earl did ever give any order to him to insist upon any of these prices? I hope the gentleman shall answer the question.

Mr. *Lutwyche.* We apprehend we are upon a proper question; on the one side we say these sums were insisted upon, and that there was an agreement made for them; on the other side the noble lord in his Answer says, they were presents, without any regard to any agreement, and voluntary, as if there had been no bargain at all.

Serj. *Pengelly.* My lords, we only propose a general question, which we apprehend, arises from Mr. Cottingham's examination. When money is expected, we apprehend it is the same as insisting upon it: therefore we desire Mr. Cottingham may inform your lordships whether he insisted upon any of these prices without direction from my lord Macclesfield?

Cottingham. The Masters proposed those sums to me, to make such a compliment to my lord, and I acquainted the Earl with it: I did nothing without the Earl's approbation.

Serj. *Pengelly.* I desire he may be asked if he did not insist on those prices?

Serj. *Probyn.* My lords, I beg the question may be confined to some particular Article they are now upon; for as they are now upon two particular Articles, they cannot, according to the rules they were pleased themselves to lay down, ask any question, but what relates to them: we therefore desire they may confine themselves to these two Articles. As to any question they propose to any of the Articles they have opened, let them be as general as they will; but we desire they may confine themselves to those Articles: otherwise one question may involve all Articles together.

Serj. *Pengelly.* Whether we should now ask to Bennet or Kynaston, or to those who came after, we are under your lordships' direction: but we desire he may be asked, whether from the direction he received from the earl of Macclesfield, he did not insist on those sums from Kynaston and Bennet?

Cottingham. I have told you that they had both voluntarily agreed of their own accord to give 1,500 guineas, and I told my lord Macclesfield of it.

Serj. *Pengelly.* I desire he may be asked, whether he did not, by direction of my Lord Chancellor, insist upon those sums, and he would not receive under?

Cottingham. I did not. They asked me what I thought the Earl expected, I told them 1,500 guineas, as I mentioned before; they agreed to give it, and my lord said he would take it.

Serj. *Pengelly.* At the time when the lord Macclesfield agreed to take those sums, whether he did not insist upon the full of those sums to be paid?

Cottingham. Yes, he said he would take them.

Mr. *Plummer.* My lord Macclesfield does not disown in his Answer the accepting of a present in general; but avoids saying what sum in particular he accepted. Therefore I am apt to think the instructions the secretary had, might be like the Answer: so that it is very proper to ask whether he had not general instructions, that when any Master's place was vacant, or like to be vacant, he should insist upon such a price?

Cottingham. I had no such instructions: the gentlemen came and talked to me, and proposed to me the sum they were willing to give, and I laid it before the Earl: I had no particular instructions.

Mr. *Plummer.* With submission, Mr. Cottingham has not answered the question; therefore I beg leave to ask him further, whether he hath not said elsewhere, that he received particular directions from my lord Macclesfield to insist upon such a sum?

Cottingham. I cannot say but I have, and if you name the Masters, I can answer more particularly.

Sir *Wm. Strickland.* I would ask him this question, whether he has not directly said, that he transacted none of these affairs without my lord's direction?

Cottingham. I own it I have said so: I own it before your lordships, that I said that what I did be approved of.

E. of *Macclesfield.* I desire he may be asked this question, to each distinctly, whether I so much as knew any thing of the matter as to any sum offered by Mr. Kynaston or Mr. Bennet, till he told me the whole sum?

Cottingham. No, never.

E. of *Macclesfield.* Whether I had any discourse about Mr. Kynaston or Bennet being admitted, or the money they should give, till he told me they would give me 1,500 guineas?

Cottingham. No, not any discourse: I told the Earl what they offered, and he was pleased to accept it.

E. of *Macclesfield.* I beg leave he may be asked this other question, since these gentlemen have gone now into that matter, whether he did not tell me, at the same time that Mr. Kynaston said he would give me 1,500 guineas, that he likewise said, if that was not sufficient I might please myself?

Serj. *Pengelly.* I hope the question may be asked in general, when they have taken liberty to interrupt the Managers for asking leading questions; and hope his lordship will ask nothing that is leading.

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Cottingham. To the best of my remembrance, I speak it doubtfully, I am not certain Mr. Kynaston told me, if the 1,500 guineas would not satisfy the Earl, he should satisfy himself.

E. of *Macclesfield.* I desire to know certainly, whether he told me so?

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E. of *Macclesfield.* What did I say thereon?

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Cottingham. I told you what my lord Macclesfield put to me. I certainly told him so. But as to what Mr. Kynaston told me, that I speak doubtfully; it is a considerable time ago; I cannot speak it positively, I speak doubtfully, to the best of my remembrance it was so: I told your lordships before.

Serj. *Pengelly.* My lords, we shall not trouble your lordships with calling any more witnesses on this Article, when it appears plainly, that he was entrusted to adjust the prices, and whether they were given to him or my lord is not material. As to this Article, and the Article relating to Mr. Kynaston, we shall leave it with this observation; he is pleased to say in his Answer, as to the few presents received from Mr. Kynaston and Mr. Bennet, that he the said Earl did afterwards, and before the Impeachment, deliver the same into the Court of Chancery, in open Court. All that we beg leave to put your lordships in mind of, is, that from your own Journals it will appear, the Impeachment was brought up here the 13th of February, 1724. When my lord comes to shew at what time he paid the money, we apprehend it will be ten days after. The next Article relates to Mr. Francis Elde.

Mr. *Elde* called.

Mr. *Lutwyche.* My lords, we desire that Mr. Elde may be sworn. [Sworn accordingly.]

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Serj. *Probyn.* Did he talk of any less sum?

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Mr. *Elde* called.

Mr. *Lutwyche.* My lords, we desire that Mr. Elde may be sworn. [Sworn accordingly.]

Mr. *Lutwyche.* My lords, we desire Mr. Elde may be asked when it was he was admitted a Master in Chancery?

Elde. My lords, I was admitted the first day of February last was twelvemonth.

Mr. *Lutwyche.* We desire he may be asked, whether he applied in person to my lord Macclesfield to be admitted into this office, and whether it was upon death or resignation?

Elde. Upon the death of Mr. William Fellowes some of my friends came to me, and put it into my head that this office might be a proper office for me, and I took some time to consider of it. I had some encouragement at the bar, and was very unwilling to quit it, but after two day's consideration I went to my lord himself; I told his lordship an office was fallen by the death of Mr. Fellowes; if his lordship thought me a proper person; and I should be glad to have it. I was come to wait upon him about it. His lordship said, he had no manner of objection to me, he had known me a considerable time, and he believed I should make a good officer.

Mr. *Lutwyche.* What further discourse was there?

Elde. My lord at that time desired me further to consider of it, and come to him again: and so I did. I went back from his lordship, and I came again in a day or two, I believe it was the second after I came back from his lordship, and told him I had considered of it, and desired to know if his lordship thought fit to admit me; and I would make him a present of 4 or 5,000*l.* I cannot say which of the two I said, but I believe it was 5,000*l.*

Mr. *Lutwyche.* What answer did my lord return, when you made him that proposal?

Elde. My lord said, Thee and I, or you and I, my lord was pleased to treat me as a friend, must not make bargains.

Mr. *Lutwyche.* My lords, we desire he may be asked, whether my lord Macclesfield said in what manner he would treat with him, whether in a more beneficial manner than any body else?

Elde. My lord Macclesfield did say, that if I was desirous of having the office, he would treat with me in a different manner than he would with any man living; those were the words my lord used, to the best of my remembrance.

Serj. *Pengelly.* After this answer of my lord Macclesfield, that they must not make bargains, what further application did he make?

Elde. I made no further application at all, but spoke to Mr. Cottingham, meeting him in Westminster-hall, and told him I had been at my lord's, and my lord was pleased to speak very kindly to me, and I had proposed to give him 5,000*l.* Mr. Cottingham answered, Guineas are handsomer.

Mr. *Lutwyche.* We desire to know what he paid, and in what manner, and in what specie?

Elde. My lords, I paid my lord,—I cannot say I paid it him, but I paid 5,000 guineas,

Mr. *Lutwyche.* In what manner? Who did you pay it to?

Serj. *Pengelly.* After this agreement with Mr. Cottingham to make it guineas, as being handsomer: we desire he may inform your lordships what he did pursuant to this, and what he carried with him?

Elde. Upon this, I immediately went to my lord's, I was willing to get into the office as soon as I could. I did carry with me 5,000 guineas in gold and Bank notes: I am not certain whether there was 3,000 guineas in gold or two, but I think there was three, and the residue of the money was in Bank notes. This I brought to my lord's house.

Serj. *Pengelly.* My lords, we desire he may be asked, what they were put into, or in what they were carried?

Elde. I had the money in my chambers. I could not tell how to convey it: it was a great burthen and weight; but recollecting I had a basket in my chamber, I put the guineas into the basket, and the notes with them; I went in a chair and took with me the basket in my chair. When I came to my lord's house I saw Mr. Cottingham there, and I gave him the basket, and desired him to carry it up to my lord.

Serj. *Pengelly.* What answer did he return?

Elde. I saw him go up stairs with the basket, and when he came down he intimated to me that he had delivered it.

Mr. *Lutwyche.* My lords, we desire he may be asked, whether he acquainted Mr. Cottingham with what was in the basket?

Elde. I did not.

Serj. *Pengelly.* After Mr. Cottingham came and acquainted you he had delivered the basket, how long after that was it before you saw my lord?

Elde. I did not see my lord after that till I was sworn in.

Serj. *Pengelly.* How long was that after?

Elde. I cannot be positive; but it was within a day, either the same day, or if not, it was the next day after.

Serj. *Pengelly.* I desire he may be asked, when Mr. Cottingham returned down stairs, after the delivery of the basket, what he said to him about the time of his being admitted?

Elde. I do not remember he said any thing to me about my being admitted: I took that for granted.

Serj. *Pengelly.* And when he was admitted, whether he was admitted in the closet, or in what room?

Elde. When I was to be admitted, my lord invited me to dinner, and some of my friends with me; and he was pleased to treat me, and some members of the House of Commons, in a very handsome manner: I was after dinner sworn in before them.

Serj. *Pengelly.* I desire to ask, whether he had the basket again?

Elde. Some months after I spoke to my lord's gentleman, and desired him, if he saw such a basket, that he would give it me back; and some time after he did so.

Serj. *Pengelly.* Was any money returned in it?—*Elde.* No, my lords, there was not.

Mr. *Lutwyche.* There is one thing in the Earl's Answer, that he retained only part of the present so made him by Mr Elde. I perceive the gentlemen of the other side do not ask any questions about it? if they do not, we shall go on.

Sir *Wm. Strickland.* I desire to know what Mr. Cottingham did say, after he had carried up the basket, and came down again?

Elde. To the best of my remembrance, he said nothing to me, but as I repeated it before, he intimated to me that he had delivered it to my lord Macclesfield. I cannot say as to any particular discourse; but I understood that he had delivered it.

Serj. *Probyn.* My lords, if they have done with Mr. Elde, I would beg leave to ask him one question, and that is in relation to what the impeached Earl said in his Answer, that he retained of the present sent him by the said Mr. Elde no more than the sum of 1,850*l.* We desire therefore that he may be asked, how much was returned to him of the 5,000 guineas which he at first paid?—*Elde.* 3,400.

Mr. *West.* When was that returned again to him?

Elde. In November last, to the best of my remembrance.

Mr. *Onslow.* In what manner was that money returned to him?

Serj. *Probyn.* We have not yet done with him. I desire to know when you went out of town, and when you returned; and how long after your return was it repaid?

Elde. It was repaid to me, to the best of my knowledge, within three, four, or five days after my return. As soon as I came from the country, the Earl took notice of it, and said that he would repay me: For some time in May before, or thereabouts, the noble lord had taken notice, that he had received this present from me, and he would make me exceedingly easy.

Serj. *Probyn.* This was before you went out of town?—*Elde.* Before I went out of town.

Serj. *Probyn.* When did you return to town?

Elde. I returned the 19th, 20th, or 21st of November.

Serj. *Probyn.* How soon after you came to town did you see my lord?

Elde. Very soon after I came to town.

Serj. *Probyn.* What discourse had you with him about it?

Elde. My lord told me he would return me my money again; he did not say all, but he would return me my money; and that he had done it before, had it been convenient.

Serj. *Probyn.* How soon after this discourse was it that the money was returned?

Elde. I believe two or three days.

Mr. *Onslow.* If the gentlemen have done, I desire he may be asked, In what manner this money was returned, and by whom?

Elde. After this discourse, my lord Parker sent for me, my Lord Chancellor was then at Westminster-hall, and told me my lord Chancellor had desired him to pay to me 3,400*l.* and he did pay it.

Mr. *Lutwyche.* My lords, if I understand Mr. Elde right, he said there was something mentioned by my lord of this kindness before he went into the country. I desire he may be asked, upon what occasion he was going into the country at that time?

Mr. *Onslow.* I desire that he may first answer in what manner, by whom, and where, this money was repaid to him, whether in money, or notes, or how?

Elde. To the best of my remembrance it was paid in this manner; there was 1,400*l.* in Bank notes, and 2,000*l.* in India bonds.

Mr. *Onslow.* Who was this paid by?

Elde. By my lord Parker.

Mr. *Onslow.* Whether he gave any receipt for the money, or any part of it, and to what effect?

Elde. When my lord paid me the money, he said my lord Macclesfield had ordered me to be paid the money; but his lordship not having so much by him, therefore he had ordered him to make it up, and to pay me 2,000*l.* out of his own money; and that as 2,000*l.* of it was his own money, he desired me to give a note of the receipt of it.

Serj. *Pengelly.* Whether was that note, a note for repayment of the money, or a receipt?

Elde. It was not for repayment, that I remember; but it was an acknowledgment of the receipt of the money, that I had received so much.

Serj. *Pengelly.* Whether it did not contain a further acknowledgment for repayment?

Elde. Not that I know of.

Serj. *Pengelly.* Was it said upon whose account the money was paid?—*Elde.* Yes.

Serj. *Pengelly.* We desire he may be asked, How many days before he was to produce the balance of his cash before the commissioners that he received this money?

Elde. I cannot say how long before; it might be a fortnight or three weeks; I cannot say; it was not long before.

Serj. *Pengelly.* Whether it was not necessary for him to make use of this money, in order to make up this balance?

Elde. I will answer that question as well as I can: I did make use of it to that purpose, as having it by me; but I was not so poor as to be put to a necessity of so doing; I could have had the money any where of any body that knew me.

Mr. *Lutwyche.* My lords, I desire he may be asked, Whether he can remember the particular time to a day, when it was repaid him?

Elde. Upon my oath, I cannot tell the particular time.

Mr. *Onslow.* Was it after the enquiry was directed to be made by the lords of the council?

Elde. Yes, my lords, I was in the country when the enquiry was directed to be made, and a month after.

Mr. *Lutwyche.* I mentioned a question before; Mr. Elde was mentioning that my lord

Macclesfield had said to him before he went out of town, that he would make him exceeding easy: I desire he may be asked where he was then going, and upon what occasion?

Elde. My lords, I was going into Staffordshire, where the little effects I have in the world lie.

Mr. *Lutwyche.* I would know upon what occasion?

Elde. I never missed going into the country the beginning of August, for these ten years past.

Mr. *Lutwyche.* Whether there was any particular occasion for his going down into the country at that time?

Elde. If your lordships are of opinion that this is a fair question, I will as fairly answer it. I went down to my house, to look into what little affairs I had there. I called at Stafford first, and there declared myself a candidate for the election that was to ensue.

Mr. *Lutwyche.* We desire he may be asked, when he returned?

Elde. I returned about the 19th or 20th of November.

Mr. *Plummer.* Mr. Elde says, when my lord Parker paid him, he had a note from him, acknowledging the receipt of the money: I desire to know, Whether that note was taken up again, and when?

Elde. The note I gave my lord Parker?

Mr. *Plummer.* Yes.

Elde. My lord Parker sent for me, and gave me the note again. I do not know that I saw my lord Macclesfield till after I had seen lord Parker, and he had given me up the note again.

Mr. *Plummer.* I desire he may be asked, When the note was delivered up to him?

Elde. That was asked before; I cannot tell the day.

Mr. *Plummer.* It was never asked here before: The question I ask is, When the note was delivered up?

Elde. I do not remember the day.

Mr. *Plummer.* As near as you can.

Elde. In the beginning of December.

Mr. *Sandys.* I beg leave to ask one question: he says that he applied this money, which he received of my lord Parker, towards making good the balance of his accompt; Whether or no, he did not first refuse to swear to the balance of that account; and what was the occasion of it?

Elde. When I had delivered in my accompt, the question I was asked, the first time, was proposed to me, not by any of the judges who were appointed to inspect our accompts, but by sir Nathaniel Gould, who proposed it in such a manner that I could not by any means take it. He asked me, Whether I owed any thing? And I was to swear I owed nothing: I told him I could not swear any such thing. I had some arguments with him about the absurdity of such an oath, and said, If I owe a million of money that is nothing to the purpose: there is the money due on the balance of my accompt; I deliver it to you: I laid the money upon the table, and insisted upon leaving it with them.

Mr. *Sandys.* Whether that note was delivered to him after he refused to take the oath?

Elde. It was.

Mr. *Sandys.* Whether that note was not the occasion of his refusing to take the oath?

Elde. I cannot say but it was an ingredient in it.

Sir *George Oxenden.* I would be glad to know where this note is?

Elde. When my lord Parker delivered it to me, I lapt it up, and put it in my pocket: my lord asked me why I did so? I answered, I would keep it as a memorandum of my Lord Chancellor's favour to me; but when I came home, considering that it would be of no service, and that it might be hazardous to keep it by me, I tore it.

Dr. *Sayer.* I desire he may be asked, Whether he did not look upon himself entirely discharged from any demand on account of that money, or did think himself bound to answer it.

Elde. I do not think myself bound to answer it.

Dr. *Sayer.* Whether he apprehends it to be a free and perfect gift?—*Elde.* I do, my lords.

[Mr. *Cottingham* called again.]

Serj. *Pengelly.* My lords, we left the basket in the hands of Mr. Cottingham; therefore it is necessary that Mr. Cottingham inform your lordships what became of it afterwards; what he did with the basket after he had it from Mr. Elde?

Cottingham. My lords, I carried it up to my lord, and set it down in his study.

Serj. *Pengelly.* What did you say to my lord?

Cottingham. Nothing. Mr. Elde ordered me to carry up the basket; I carried it up, and there I set it down: I never saw it afterwards.

Serj. *Pengelly.* Whether do you remember what answer my lord Macclesfield made at that time?

Cottingham. None that I remember.

Serj. *Pengelly.* Whether did he open the basket?

Cottingham. No; the basket was covered up, and I set it down in my lord's closet.

Serj. *Pengelly.* Whether, after that time, he appointed any time for Mr. Elde to be admitted?

Cottingham. I think he was admitted that very same day.

Serj. *Pengelly.* I desire this witness may be asked, whether he received any thing from Mr. Elde, besides what was in the basket?

Cottingham. Not a farthing, except my fees: nor no more of any of the Masters than my usual fees.

Serj. *Probyn.* We desire Mr. Cottingham may be asked, whether at this time, when Mr. Elde desired to be admitted into this office, there was any other person who desired it, or made any offer for it?

Cottingham. Mr. Lucas, a gentleman of the Temple, was recommended to the Earl by Mr. Bulstrode, who is since dead. He had been formerly a commissioner of the Excise; his name was Whitlock Bulstrode. Mr. Lucas did tell me upon that occasion, if the Earl would admit him, he would give him 6,000*l.* for the office. I took a memorandum of it at that time, and I had it in my hands four or five days ago.

Serj. *Probyn.* When Mr. Lucas told you this, whether did you inform the then Lord Chancellor of it?

Cottingham. Yes, I am sure I did; and the answer he made me was, That Mr. Elde was of a family which were his particular friends and acquaintance, for whom he had a great friendship and value, and that he should have it 1,000*l.* cheaper, or lesser than any body else.

Mr. *Strange.* I desire he may be asked, whether, before Mr. Elde was admitted, he did not acquaint the noble lord, that this Mr. Lucas would give 6,000*l.*?

Cottingham. Yes, I did.

Serj. *Pengelly.* I desire to know whether I understand Mr. Cottingham right? He says, that my lord would let Mr. Elde have it cheaper than any body else: Whether he understood by that, that my lord expected somebody else would give him more?

Cottingham. My lord said he would let Mr. Elde have it upon the score of particular friendship and acquaintance.

Serj. *Pengelly.* If I heard him right, I submit it to your lordships, whether he did not say that Mr. Elde should have it 1,000*l.* cheaper than any other person? I ask, whether he did not understand my lord Macclesfield would have 1,000*l.* more from any other person?

E. of *Macclesfield.* My lords, I hope I am not to be charged with the imaginations of this gentleman; he is asked about his apprehension of my intention in a case that did not happen. I desire he may be asked, If he knew what character Mr. Elde had?

Cottingham. A very good one.

E. of *Macclesfield.* I desire it may be asked, whether he did not know that I had a great opinion of Mr. Elde's ability and integrity?

Cottingham. He was one your lordship had a great opinion of, and that he was very deserving. I never heard your lordship express a better opinion of any man than of Mr. Elde.

Serj. *Pengelly.* We have done with this Article: the next Article is the Eighth. We desire Mr. Thurston may be sworn.

Mr. *Mark Thurston* sworn.

Serj. *Pengelly.* My lords, we desire that Mr. Thurston may give your lordships an account, when he was admitted into one of the offices of the Masters in Chancery, and upon whose death?

Thurston. My lords, I was admitted into this office upon the death of Mr. Borret, and the day of my admission was the 5th of August last.

Serj. *Pengelly.* I desire he may be asked, Whether, before his admission, he had made any application either to my lord Macclesfield or his secretary, or any person concerned for him?

Thurston. My lords, before my admission, I did make some application to my Lord Chancellor's secretary, Mr. Cottingham; and at that time I made a proposal of making a present of 5,000 guineas to be admitted into the office. Mr. Cottingham asked me several questions about my circumstances, and what persons I could name that would recommend me to his lordship; to which I gave the proper answers, and mentioned several gentlemen he knew. After that, I having the honour of being acquainted with my lord commissioner Gilbert, before I took any other steps, I waited on his lordship, and acquainted him with my resolution, and begged the favour of him, that he would take the trouble to recommend me to my Lord Chancellor, as his friend, and a fit person for the office. His lordship did take that trouble, and waited upon my lord at Westminster, who was then sitting upon the bench; and after notice was sent him of that gentleman's being in the little room behind, his lordship came off the bench; and some time being spent in conversation between them, I was called in, and kindly recommended by that honourable person; and my lord Macclesfield seemed to approve of me upon his recommendation. But I should acquaint your lordships, that as to that part of the transaction with Mr. Cottingham, he said that he would report those things to my lord Macclesfield, of my character and person, though he never reported any thing back to me again upon it: but I took the next ensuing steps, by the intervention of the honourable gentleman, my lord commissioner Gilbert.

Sir *Wm. Strickland.* Whether he did not understand that my lord Macclesfield agreed to his proposals?—*Thurston.* Yes.

Sir *Wm. Strickland.* After this transaction with Mr. Cottingham, what further application was made? And why he was not immediately admitted at that time?

Thurston. It was not expected by me to be immediately admitted at that time: because my Lord Chancellor did not absolutely determine me to be the person; but said he had so good a character of me, that he believed I should be the man.

Sir *Wm. Strickland.* Whether Mr. Thurston, being uneasy about the delaying of admitting him, did apply to any other person afterwards?

Thurston. After my being introduced to my Lord Chancellor, there was some time for my lord's consideration. Near a week after, a message was sent me by Mr. Cottingham, that my lord would be ready to admit me such a day. Before the day came I had a message contradicting it, upon my Lord Chancellor's

being engaged to attend the council on that day. After that, I expected the appointment of another day for that purpose; and in the mean time this affair had got into the public newspapers as every thing does, and I was named by every body to be the person fixed upon; and people resorted to me to transact the business of the office, which I could not do without being duly admitted. And shortly after that time, there was a report spread, that my Lord Chancellor had designed to make a present of the place to some gentleman in the country, which gave me an uneasiness, and put me upon an expedient, that since I could not have ready access to so great a person as his lordship, I went to Kensington one morning to wait upon the countess of Macclesfield; and upon sending up my name, and that I desired to speak with her, in a short time I had the honour of seeing her, and acquainted her that I was the person that my lord had promised the office to, and that I could not proceed therein without being sworn; therefore I desired her ladyship to intercede with my lord, that I might be speedily sworn in. Her ladyship said, She never did meddle in any affairs of a public nature. I used several arguments with her, as that the thing was now public and in print, that it might be a great disappointment to me, and might affect my character, if my lord did not think fit to admit me. I laid a good deal of stress upon these arguments; and I acquainted her ladyship that I did not expect or desire to come in without the due present that is always esteemed the perquisite of the great seal. Then I repeated those other arguments again, that my character might be affected by these disappointments; whereby her ladyship was prevailed upon to promise she would write a letter and acquaint my Lord Chancellor with it. Before I went away from the room where I had the honour to be with the lady, I did leave upon the table Bank notes to the value of 5,250*l.*

Serj. *Pengelly.* How were they directed?

Thurston. I directed them to the countess of Macclesfield.

Serj. *Pengelly.* I desire he may be asked, How soon after this he was admitted?

Thurston. I believe it was within two or three days after, at farthest, that I was admitted and sworn into this office.

Serj. *Pengelly.* We desire he may give your lordships an account who was his predecessor?

Thurston. Mr. Borret, as I acquainted your lordships before.

Serj. *Pengelly.* We desire he may acquaint your lordships of the state of the office, as it came into his hands. What was the deficiency of the office, due to the suitors of the Court, not answered by the effects of Mr. Borret, when it came into your hands?

Thurston. That is a question I can't possibly answer, because I never had those accompts under my inspection; and I don't find the gentlemen that have can give an account of it.

Serj. *Pengelly.* I do not ask to a particular sum; but whether there was a deficiency, any deficiency, and about what sum?

Thurston. I do not know any thing at all about the matter; I might as well guess what a gentleman is worth that I know nothing of.

Serj. *Pengelly.* Whether there were effects sufficient to answer all the suitors' demands?

Thurston. I cannot tell; because there was not any particular or exact accompt of it, that is come to my knowledge.

Serj. *Pengelly.* Whether the suitors have been paid the money left, or deposited by them in the hands of Mr. Borret?

E. of *Macclesfield.* My lords, if there be any order of the Court for their being paid, it will appear, and they may produce these orders to your lordships: How can they pay without any order?

Serj. *Pengelly.* I do not speak of orders, I only ask, Whether he knows that the suitors have been paid?

Thurston. It is impossible for me to have any knowledge of it, for the reasons I gave you before; having had no inspection of those accounts.

Mr. *Lutwyche.* I desire he may be asked, Whether any effects, or money, or cash, and to what value, have been transferred to him, as the effects of Mr. Borret?

Thurston. About 4,200*l.*

Mr. *Lutwyche.* Whether he knows what the cash was that was in Mr. Borret's hands?

Thurston. No, my lords, I do not know.

Serj. *Pengelly.* I desire he may be asked, whether he has been applied to by any of the suitors of the Court, upon the account of money deposited in Mr. Borret's hands?

Thurston. I cannot say nobody has applied to me for money due in Mr. Borret's office; several suitors, or their representatives, have been enquiring after such things, who have been satisfied with having such an answer as the present circumstances would furnish. There were some sums of money, before this broke out, paid to suitors, that was interest money; and who were represented to me as people in necessity, to the amount of 3 or 400*l.* When this broke out, I then desisted payment, upon the advice of a great friend.

Mr. *Lutwyche.* I desire he would explain himself, what he means by saying, before this broke out?

Thurston. What I mean was, the enquiry made into the Masters' accompts, by his majesty's direction in council.

Mr. *Lutwyche.* The sum of money he paid; I desire he may be asked, who he received that sum from?

Thurston. I received it from Mr. Godfrey, the Master in Chancery.

Mr. *Lutwyche.* I desire he may be asked, whether he knew of any administration taken out to Mr. Borret, and at what time?

Thurston. I believe Mr. Godfrey and Mr. Bennet were desired to take that trouble upon them, to look into Mr. Borret's affairs by the

Lord Chancellor, which they proceeded and took some steps in, till they were discouraged from it by the enquiry that was set on foot. They tell me now, that administration is granted to Mr. Paxton.

Serj. *Pengelly.* I desire he may inform your lordships, since he paid the interest, why he did not pay the principal?

E. of *Macclesfield.* I believe it would save your lordships' time, if Mr. Serjeant would ask his questions in such a manner, as not to imply something which was not admitted, or said by the witness. The question supposes a principal sum demanded; the proper question is, first to ask if any principal sum was demanded; and whether it was, or was not paid?

Serj. *Pengelly.* I apprehend that Mr. Thurston says, that creditors came to him, suitors of the Court, and he could not pay any more than the interest; therefore I apprehend they came to him for the money lodged in the hands of Mr. Borret. Therefore I desire he may be asked, whether any of those persons that demanded their money were paid?

E. of *Macclesfield.* I desire he may be asked, whether any demanded the principal sum; and by what order?

Serj. *Pengelly.* I desire to ask my own questions; I apprehend I am not to be directed in the asking my questions by the lord impeached. I desire to ask what suitors applied, and what sums they demanded?

Thurston. The names of the suitors I can't recollect, I believe it is not necessary to trouble your lordships with them. The sums demanded were only interest money. The principal sum for which I paid the interest, to the best of my remembrance, was 700*l.* There was no demand made of principal money to be paid. But there might be enquiries made, I believe, by a noble peer of this House, which I was so very unfortunate, that I could not inform his lordship of the state of what he enquired after.

Mr. *Plummer.* Mr. Thurston says, he desisted from paying any further sums upon very good advice; I desire to know why, or by whose advice, he desisted paying?

Thurston. It was upon a prudential reason I did desist; because when a public enquiry was set on foot, I did not know how far I might be affected, in being made answerable myself for it.

Mr. *Plummer.* Whether he had any suspicion that there was a deficiency in Mr. Borret's office?

Thurston. There was a suspicion that there was not competent money to satisfy all the suitors' demands.

Mr. *Lutwyche.* I desire he may be asked, whether there was not an order for transferring the effects in Mr. Borret's hands to him?

Thurston. Upon the admission of every Master, there is an order of course signed by the Lord Chancellor, to transfer the effects to the successor.

Mr. *Lutwyche.* I ask if any such order came to him?—*Thurston.* There did, my lords.

Mr. *Lutwyche.* Was there any transfer of the effects according to that order?

Thurston. No, there was not a complete transfer.

Mr. *Lutwyche.* Why was it not, as usual in the case of other Masters, that either are removed, and are able to transfer; or in case, upon death, where their representatives are able to do it?

Thurston. The reason it was not done, I conceive, was, because it was impracticable, there being no representative of my predecessor, no administration being taken out.

Serj. *Pengelly.* I desire he may inform your lordships, whether he was not applied to, by a noble peer of this House, concerning some effects deposited in the hands of Mr. Borret, and what account he then gave him of the state and situation of the office?

E. of *Macclesfield.* I am really very sorry to trouble your lordships so often. What is it to me what this gentleman said? He is now upon his oath, and to give to your lordships an account what he knows; but to ask him what he said at such a time, to affect me, I hope they will not insist upon it.

Serj. *Pengelly.* When he has declared what he said, then there will be another question, whether that was true in fact? And that question will then affect the impeached lord.

E. of *Macclesfield.* If Mr. Serjeant will ask a proper question first, he may; but he should not ask an improper thing, because he will ask a proper question afterwards.

Serj. *Pengelly.* We apprehend it is proper evidence to be given, that he gave such an account of the office, in answer to the noble lord: Therefore I desire to know what account he gave to that noble lord?

E. of *Macclesfield.* My lords, I humbly oppose that question, and desire your lordships' judgment whether he is to ask what this person said?

Mr. *Lutwyche.* I believe the same end may be obtained by asking a question without dispute, and to which there can be no objection; that is, whether or no he had any reasons to think that there was a deficiency in the office, and what those reasons were?

Mr. *Strange.* My lords, we beg leave to oppose that question: What his private opinion may be, is no evidence; he and another may think variously of the same matter. They are to ask him as to fact, and not to his opinion.

Mr. *Plummer.* I have not had the happiness to be bred a lawyer, and therefore may be mistaken as to legal evidence; but surely, when your lordships are examining a person to the deficiency of his own office, none can give a better account than himself. I desire he would answer what he knows, whether he had the complete money of Mr. Borret's transferred to him?

Thurston. The complete money of the office hath not been transferred to me, and for the reasons I have mentioned to your lordships; for want of an administration.

being engaged to attend the council on that day. After that, I expected the appointment of another day for that purpose; and in the mean time this affair had got into the public newspapers as every thing does, and I was named by every body to be the person fixed upon; and people resorted to me to transact the business of the office, which I could not do without being duly admitted. And shortly after that time, there was a report spread, that my Lord Chancellor had designed to make a present of the place to some gentleman in the country, which gave me an uneasiness, and put me upon an expedient, that since I could not have ready access to so great a person as his lordship, I went to Kensington one morning to wait upon the countess of Macclesfield; and upon sending up my name, and that I desired to speak with her, in a short time I had the honour of seeing her, and acquainted her that I was the person that my lord had promised the office to, and that I could not proceed therein without being sworn; therefore I desired her ladyship to intercede with my lord, that I might be speedily sworn in. Her ladyship said, She never did meddle in any affairs of a public nature. I used several arguments with her, as that the thing was now public and in print, that it might be a great disappointment to me, and might affect my character, if my lord did not think fit to admit me. I laid a good deal of stress upon these arguments; and I acquainted her ladyship that I did not expect or desire to come in without the due present that is always esteemed the perquisite of the great seal. Then I repeated those other arguments again, that my character might be affected by these disappointments; whereby her ladyship was prevailed upon to promise she would write a letter and acquaint my Lord Chancellor with it. Before I went away from the room where I had the honour to be with the lady, I did leave upon the table Bank notes to the value of 5,250*l.*

Serj. *Pengelly.* How were they directed?

Thurston. I directed them to the countess of Macclesfield.

Serj. *Pengelly.* I desire he may be asked, How soon after this he was admitted?

Thurston. I believe it was within two or three days after, at farthest, that I was admitted and sworn into this office.

Serj. *Pengelly.* We desire he may give your lordships an account who was his predecessor?

Thurston. Mr. Borret, as I acquainted your lordships before.

Serj. *Pengelly.* We desire he may acquaint your lordships of the state of the office, as it came into his hands. What was the deficiency of the office, due to the suitors of the Court, not answered by the effects of Mr. Borret, when it came into your hands?

Thurston. That is a question I can't possibly answer, because I never had those accompts under my inspection; and I don't find the gentlemen that have can give an account of it.

Serj. *Pengelly.* I do not ask to a particular sum; but whether there was a deficiency, any deficiency, and about what sum?

Thurston. I do not know any thing at all about the matter; I might as well guess what a gentleman is worth that I know nothing of.

Serj. *Pengelly.* Whether there were effects sufficient to answer all the suitors' demands?

Thurston. I cannot tell; because there was not any particular or exact accompt of it, that is come to my knowledge.

Serj. *Pengelly.* Whether the suitors have been paid the money left, or deposited by them in the hands of Mr. Borret?

E. of *Macclesfield.* My lords, if there be any order of the Court for their being paid, it will appear, and they may produce those orders to your lordships: How can they pay without any order?

Serj. *Pengelly.* I do not speak of orders, I only ask, Whether he knows that the suitors have been paid?

Thurston. It is impossible for me to have any knowledge of it, for the reasons I gave you before; having had no inspection of those accounts.

Mr. *Lutwyche.* I desire he may be asked, Whether any effects, or money, or cash, and to what value, have been transferred to him, as the effects of Mr. Borret?

Thurston. About 4,200*l.*

Mr. *Lutwyche.* Whether he knows what the cash was that was in Mr. Borret's hands?

Thurston. No, my lords, I do not know.

Serj. *Pengelly.* I desire he may be asked, whether he has been applied to by any of the suitors of the Court, upon the account of money deposited in Mr. Borret's hands?

Thurston. I cannot say nobody has applied to me for money due in Mr. Borret's office; several suitors, or their representatives, have been enquiring after such things, who have been satisfied with having such an answer as the present circumstances would furnish. There were some sums of money, before this broke out, paid to suitors, that was interest money; and who were represented to me as people in necessity, to the amount of 3 or 400*l.* When this broke out, I then desisted payment, upon the advice of a great friend.

Mr. *Lutwyche.* I desire he would explain himself, what he means by saying, before this broke out?

Thurston. What I mean was, the enquiry made into the Masters' accompts, by his majesty's direction in council.

Mr. *Lutwyche.* The sum of money he paid; I desire he may be asked, who he received that sum from?

Thurston. I received it from Mr. Godfrey, the Master in Chancery.

Mr. *Lutwyche.* I desire he may be asked, whether he knew of any administration taken out to Mr. Borret, and at what time?

Thurston. I believe Mr. Godfrey and Mr. Bennet were desired to take that trouble upon them, to look into Mr. Borret's affairs by the

Lord Chancellor, which they proceeded and took some steps in, till they were discouraged from it by the enquiry that was set on foot. They tell me now, that administration is granted to Mr. Paxton.

Serj. *Pengelly.* I desire he may inform your lordships, since he paid the interest, why he did not pay the principal?

E. of *Macclesfield.* I believe it would save your lordships' time, if Mr. Serjeant would ask his questions in such a manner, as not to imply something which was not admitted, or said by the witness. The question supposes a principal sum demanded; the proper question is, first to ask if any principal sum was demanded; and whether it was, or was not paid?

Serj. *Pengelly.* I apprehend that Mr. Thurston says, that creditors came to him, suitors of the Court, and he could not pay any more than the interest; therefore I apprehend they came to him for the money lodged in the hands of Mr. Borret. Therefore I desire he may be asked, whether any of those persons that demanded their money were paid?

E. of *Macclesfield.* I desire he may be asked, whether any demanded the principal sum; and by what order?

Serj. *Pengelly.* I desire to ask my own questions; I apprehend I am not to be directed in the asking my questions by the lord impeached. I desire to ask what suitors applied, and what sums they demanded?

Thurston. The names of the suitors I can't recollect, I believe it is not necessary to trouble your lordships with them. The sums demanded were only interest money. The principal sum for which I paid the interest, to the best of my remembrance, was 700*l.* There was no demand made of principal money to be paid. But there might be enquiries made, I believe, by a noble peer of this House, which I was so very unfortunate, that I could not inform his lordship of the state of what he enquired after.

Mr. *Plummer.* Mr. Thurston says, he desisted from paying any further sums upon very good advice; I desire to know why, or by whose advice, he desisted paying?

Thurston. It was upon a prudential reason I did desist; because when a public enquiry was set on foot, I did not know how far I might be affected, in being made answerable myself for it.

Mr. *Plummer.* Whether he had any suspicion that there was a deficiency in Mr. Borret's office?

Thurston. There was a suspicion that there was not competent money to satisfy all the suitors' demands.

Mr. *Lutwyche.* I desire he may be asked, whether there was not an order for transferring the effects in Mr. Borret's hands to him?

Thurston. Upon the admission of every Master, there is an order of course signed by the Lord Chancellor, to transfer the effects to the successor.

Mr. *Lutwyche.* I ask if any such order came to him?—*Thurston.* There did, my lords.

Mr. *Lutwyche.* Was there any transfer of the effects according to that order?

Thurston. No, there was not a complete transfer.

Mr. *Lutwyche.* Why was it not, as usual in the case of other Masters, that either are removed, and are able to transfer; or in case, upon death, where their representatives are able to do it?

Thurston. The reason it was not done, I conceive, was, because it was impracticable, there being no representative of my predecessor, no administration being taken out.

Serj. *Pengelly.* I desire he may inform your lordships, whether he was not applied to, by a noble peer of this House, concerning some effects deposited in the hands of Mr. Borret, and what account he then gave him of the state and situation of the office?

E. of *Macclesfield.* I am really very sorry to trouble your lordships so often. What is it to me what this gentleman said? He is now upon his oath, and to give to your lordships an account what he knows; but to ask him what he said at such a time, to affect me, I hope they will not insist upon it.

Serj. *Pengelly.* When he has declared what he said, then there will be another question, whether that was true in fact? And that question will then affect the impeached lord.

E. of *Macclesfield.* If Mr. Serjeant will ask a proper question first, he may; but he should not ask an improper thing, because he will ask a proper question afterwards.

Serj. *Pengelly.* We apprehend it is proper evidence to be given, that he gave such an account of the office, in answer to the noble lord: Therefore I desire to know what account he gave to that noble lord?

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Mr. *Strange.* My lords, we beg leave to oppose that question: What his private opinion may be, is no evidence; he and another may think variously of the same matter. They are to ask him as to fact, and not to his opinion.

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Thurston. The complete money of the office hath not been transferred to me, and for the reasons I have mentioned to your lordships; for want of an administration.

Sir *Wm. Strickland.* I would beg leave to ask Mr. Thurston one question, and I hope a material one; whether, on his admission into that office, he did not find a great confusion in it?

Thurston. I can't say that upon my admission into that office I found great confusion in it, because all papers that came within my view were very regular, and well adjusted to dispatch business upon.

Sir *Wm. Strickland.* I desire he may be asked, whether, if he had known the state of this office, he would have given 5,000 guineas for it?

Thurston. If I had known the state of the office, and the consequences of it, as appear at this time before your lordships, rather than have given 5,000*l.* for it, I would have given 5,000*l.* to have been without it.

Serj. *Probyn.* Of the money he paid or left at the time he mentions, on my lady Macclesfield's table, I desire to know if he received any of it back again?

Thurston. I received back again, from the lady Macclesfield, the sum of 3,250*l.* in Bank notes, the same as I enclosed, when I first left it.

Dr. *Sayer.* Do you know the particular circumstances of that transaction, and upon what occasion the money came to be returned? Give a full account of that whole transaction.

Thurston. Soon after my admission, and as soon as I could adjust the affairs of my office, it being the latter end of summer, and little business stirring, I went into the country for my health. The servant I left in town, sent me word, that there were several messages from my Lord Chancellor, that he supposed might be of importance. As soon as I could conveniently, I returned to London, and in a day or two went myself to my Lord Chancellor's house, and I sent to know what the occasion of those messages was. They said, it was not from my Lord Chancellor, but it was a message from my lady Macclesfield. Upon that I immediately after waited upon her ladyship. She informed me then, that she did not know that I had left so large a present with her, as she found it was: and declaring I should be used with honour, she returned to me 3,250*l.* and the other part, she said, she would appropriate to her own use.

Serj. *Probyn.* We desire Mr. Thurston may be asked, if there was any notice taken of any order or directions from my Lord Chancellor about re-payment of the money? or whether it was only a transaction between him and my lady Macclesfield?

Thurston. There was no notice taken of any orders from my Lord Chancellor; rather an express desire that my Lord Chancellor should never be acquainted with it.

Mr. *Strange.* I would ask when this money was restored?

Thurston. The time when the money was restored, was about the middle of October.

Com. Serj. I desire he may be asked, whether at the time he first applied to lady Macclesfield, he laid down the paper those Bank bills were in on the table, before he received any answer from my lady, or afterwards?

Thurston. I laid down the Bank bills on the table, to the best of my remembrance, at the time of my coming away, and taking leave.

Com. Serj. Whether they were enclosed in a paper?

Thurston. They were enclosed in a paper, and also sealed up.

Com. Serj. Whether they were opened during the time he was there?

Thurston. No, they were not.

Com. Serj. Or taken up by my lady during that time?

Thurston. No, my lords, I don't remember they were.

Com. Serj. Whether he named the particular sum to her ladyship?

Thurston. No, my lords, not in the least. I did not give any intimation what sum was enclosed.

Mr. *Strange.* I desire he may be asked, whether he can remember that my lady did or did not open it, before he went away?

Thurston. To the best of my remembrance it was not opened before I went out of the room.

Mr. *Strange.* I desire he may be asked this further question, whether he apprehended that my lady Macclesfield was acquainted with the contents till after he was gone?

Thurston. I did not apprehend that my lady Macclesfield was acquainted with the contents of it till afterwards.

Mr. *West.* Since that gentleman hath been asked concerning his apprehension, I desire he may be asked another question of the same kind, which is, whether he apprehended he should have been admitted, if he had not left the money?

Serj. *Probyn.* We submit it to your lordships, whether that be a fair question.

Mr. *West.* Really I think it is a proper question, upon the foundation of the question asked before. The former question was, whether he apprehended my lady knew what he had left? I ask, whether he apprehended he should have been admitted, if he had not left that sum?

Thurston. I do not apprehend, that if I had come without the money, I should have been admitted. But if the notes had been returned to me without any other answer, then I should fully have apprehended that I should not have been admitted.

Sir *John Rushout.* I desire he may be asked, whether he had any particular acquaintance with the lady Macclesfield before?

Thurston. I had not that honour.

Sir *John Rushout.* Whether he had ever seen her, or been in her company before?

Thurston. My lords, I believe I never was.

Sir *John Rushout.* My lords, we desire he may be asked, what he apprehends was the reason of 3,250*l.* being returned to him?

Thurston. I know not whether I should trouble your lordships with my apprehensions, they

may not be just; but so far as I could collect from the lady's discourse, the reason was, she thought it too large a present.

Serj. *Pengelly.* I desire he may be asked, when the 3,250*l.* was returned, in what month it was?—*Thurston.* It was in October.

Serj. *Pengelly.* Whether he can recollect in what time of the month?

Thurston. I believe it was about the middle of October, to the best of my remembrance.

Dr. *Sayer.* My lords, we desire he may be asked, whether the return of this money was before or after the then first seal before Michaelmas term?

Thurston. To the best of my remembrance, the first seal was about the middle of October, and it was returned before the first seal.

Serj. *Probyn.* My lords, I desire he may be asked, whether there was any message sent about the returning of the money, before the return was made?

Thurston. I have acquainted your lordships that several messages past, while I was in the country.

Mr. *Robins.* When he waited upon my lady Macclesfield, after his return out of the country, I desire he may be asked, whether she mentioned any thing to him of the reason of those messages?

Thurston. She mentioned the reason, and said, That it was to return the money, which she said was too large a present, and that she was afraid my Lord Chancellor should come to the knowledge of it.

Serj. *Probyn.* I desire he would inform your lordships, when he went to Kensington to my lady Macclesfield, where my lord Macclesfield was?

Thurston. When I went to Kensington to my lady Macclesfield, my lord Macclesfield was then engaged in the business of the Court of Chancery, at the latter end of the sittings, or first seal after Michaelmas term.

Serj. *Probyn.* In what state of health was my Lord Chancellor at that time? Had he not continued some time before at London, and not at Kensington?

Thurston. My Lord Chancellor, by the enquiry I made, was at that time in London.

Serj. *Probyn.* How soon after your admission did the Lord Chancellor go into Oxfordshire?

Thurston. The very day after my admission, my Lord Chancellor went into Oxfordshire, as I was informed by one of my lord's officers, who came to me that day upon some business.

Mr. *Cottingham* again called.

Serj. *Pengelly.* My lords, I desire Mr. Cottingham may be asked, whether upon the proposal of 5,000 guineas made to him by Mr. Thurston, he acquainted my lord Macclesfield with it?

Cottingham. I acquainted my Lord Chancellor with the proposal made by Mr. Thurston of 5,000 guineas.

Serj. *Pengelly.* Whether did he approve of it, or reject it?

Cottingham. I am not very certain, whether the Earl did not say he would take time to consider of it. But in the main, according to my apprehension, the Earl seemed to approve of it.

Serj. *Pengelly.* I desire he may be asked, whether he received any thing for my lord Macclesfield's use upon Mr. Thurston's admission?

Cottingham. No, my lords, I received nothing but my own fees.

Serj. *Pengelly.* If he received nothing, whether he received any directions from my Lord Chancellor, relating to his receiving, or not receiving any thing from him?

Cottingham. The Earl was pleased to tell me, he had a design to have given that place to Dr. Sayer, but he was at that time in the country, out of town, at Durham: he proceeded so far as to order me to take no money of Mr. Thurston.

Serj. *Pengelly.* When was that?

Cottingham. Very soon before he was admitted.

Serj. *Pengelly.* My lords, we submit this as evidence of the lord's knowing of the receipt of this present of 5,000 guineas.

Mr. *Lutwyche.* My lords, I desire to know of Mr. Cottingham, whether my lord Macclesfield had any acquaintance with Mr. Thurston before this proposal?

Cottingham. I can't say as to that, whether he had or had not; I believe he had not, as I apprehend.

Mr. *Plummer.* I desire he may be asked one question, Whether he made any difficulty of accepting his fees on Mr. Thurston's admission?

Cottingham. Yes, I did.

Mr. *Plummer.* And why?

Cottingham. The Earl ordered me to take no money of him. Upon that general order I made a little difficulty, and told him of it; the answer he made me was, Why should I make any difficulty, when he had been thus generously dealt with by my Lord Chancellor?

Sir *Wm. Strickland.* Whether at that time, when he first mentioned the 5,000 guineas, it was not a day or two before his admission?

Cottingham. I believe it was a day or two before his admission.

Serj. *Pengelly.* My lords, we have done with Mr. Cottingham; since the name of Dr. Sayer is mentioned on this occasion, whom the noble Earl declared he would compliment with the place that fell vacant, I desire this witness may be asked, Whether that was a real compliment to Dr. Sayer, or whether Dr. Sayer made any application, or was to give any thing for it?

Cottingham. I believe, if Dr. Sayer had been then in town, my lord would really have made him a compliment of it without any present. My lord told me Dr. Sayer was his particular friend, and he had a great value and respect for him.

Mr. *Plummer.* My lords, I beg leave to ask

a question upon that question. He says he thought my lord Macclesfield would have given it him for nothing; I ask him, if he then thought he gave it Mr. Thurston for nothing?

Cottingham. The answer I can make to that question is, that I did not apprehend my lord was so well acquainted with Mr. Thurston, as to give it him for nothing.

Dr. *Sayer.* I desire he may be asked, Whether he did not represent to the earl of Macclesfield, that there was a necessity for the immediate putting a Master into that office for the dispatch of business?

Cottingham. I did represent it to the Earl, that it was necessary to put somebody into the office, for several practisers had been with me about their affairs in that office; and otherwise the business might be transferred to another office, which would have been a great prejudice. Upon that the Earl said, Mr. Thurston should be admitted.

Serj. *Probyn.* Whether you had not application from the suitors themselves, and whether there was not a clamour from them on account of the stop it put to business?

Cottingham. Yes, there was; it happened to be in the long vacation; and something, I told the Earl, must be done; there was an absolute necessity to come to some resolution or other in the matter.

Serj. *Pengelly.* In this Article, as an aggravation, it is alleged, that Mr. Borret died insolvent: we beg leave to call some witnesses to give an account of the state of the office at his admission, and afterwards at the time of his death.

Mr. *Meller* called.

Serj. *Pengelly.* My lords, we desire Mr. Meller may be asked, what sums in cash and effects he delivered over to Mr. Borret, at the time of his coming into the office?

Meller. My lords, I take it to be about 120,000*l.* I refer myself to the account given in to the judges, and directors of the bank, and signed by my hand.

Serj. *Probyn.* My lords, we submit it, whether this is regular, to examine to an account *viva voce*, which account hath been reduced into writing?

Serj. *Pengelly.* Surely the witness may make use of his own paper to refresh his memory.

E. of *Macclesfield.* I don't know what these gentlemen intend. They are reading a charge against Mr. Borret, to shew what was delivered over to him, at the time he came into the office. Is it expected I should be able to give an account what was paid to him, or by him, while he was Master? That I should give an account of his estate and effects, what it is, and if there was sufficient to pay, in his hands, or not? If these gentlemen had any order of the Court, in which this had been fixed and settled, that might have been something. It is impossible for me to enter into it.—It appears he died intestate, administration was not granted till a great while after his death; not till very lately: what account hath been taken of his effects I don't know, nor can any way shew. They are beginning with an account, which I apprehend is not a proper evidence to be given as against me, to prove that this gentleman had not effects sufficient to answer the demands upon his office.

Serj. *Pengelly.* My lords, this evidence relates to an accompt delivered in by the approbation of the lord impeached, on the enquiry made before the lords of the council. As this accompt was delivered in before them, we apprehend, so far it is a proper evidence, and a foundation for a farther enquiry, how much of it remains in the office: we shall ask other persons afterwards as to the deficiency. All the use we now make of it is, to shew the gross sum that was at first transferred over to him.

E. of *Macclesfield.* My lords, if they mean only to satisfy your lordships' curiosity, by shewing how great a sum there was in that office, I think it is of no great importance.

Mr. *Lutwyche.* All that we endeavour to prove now, is, what was very notorious at the time of Mr. Borret's death; that there was a great deficiency, and that he died insolvent, and the Earl goes a great way in this matter in his own Answer. He says in his Answer, that on the death of Mr. Borret, he desired Mr. Godfrey and Mr. Bennet to enquire into his effects, and to enter a proper caveat in the prerogative court, to prevent administration being granted to any person who might embezzle the said Borret's estate, and to obtain administration to be granted to them for the benefit of the suitors of the Court. This goes a good way, I apprehend, to incline your lordships to believe, that there were those steps used, which are unusual in the case of a man's solvency. Therefore what we would ask to is, that the witness would give an account of what he knows concerning the deficiency in this office, or give an account of such circumstances, as may induce your lordships to believe there was such a deficiency.

Com. Serj. If the gentlemen who appear on the behalf of the House of Commons think fit to rely upon our Answer, they may do it.

Sol. Gen. I think Mr. Meller hath proved that he transferred 120,000*l.* to Mr. Borret: we will now go on, and prove the deficiency.

Com. Serj. Mr. Meller hath spoke *viva voce*, in a matter which we apprehend is capable of much better proof; therefore we hope what he has said shall not go for evidence. There must have been a schedule; and he has the counterpart of that schedule, by which the effects were delivered over.

Lord *Trevor.* Mr. Meller hath a paper in his hand; I desire to know what that paper is?

Mr. *Meller.* The paper I have before me is the very account of the money delivered to Mr Borret, and the several times when; it is made by way of schedule. There is another paper by way of abstract. I drew them together at the time I delivered it to the judges.

I had not time to draw out the full account, and therefore I made an abstract; both which are signed.

E. of *Macclesfield.* The noble lord asked the question exceeding proper. The question asked is, What this paper was? Perhaps it is the very accompt Mr. Borret and he made up between them, and signed. I ask, therefore, Whether it is the accompt between them, or whether it is an account of his own drawing up since?

Meller. This is the account I drew up from my books, of which Mr. Borret had a duplicate. I verified all these items, and likewise proved the payment of the money by goldsmiths and Bank-notes.

Sol. Gen. We apprehend that this is as full evidence as can be laid before your lordships.

Serj. *Probyn.* We submit it, Whether your lordships are of opinion, that this is proper evidence? Mr. Meller hath been proposing a paper, which is not the original accompt delivered; it is not the book, but a copy of the book taken out, and given in evidence in another place: Now he would by this evidence, signed by himself, charge Mr. Borret with money delivered over to him; but as it is an accompt only signed by Mr. Meller, we submit it, Whether it can be a charge upon the representative of Borret, and consequently if it can be any evidence at all?

Serj. *Pengelly.* We beg leave to insist upon it as proper evidence. When a person makes up an accompt of his own hand-writing, and draws it up, and swears that to be a true accompt upon his own knowledge, Whether this is not proper evidence?

E. of *Macclesfield.* This gentleman has really given his evidence, though it was objected to: It will be a proper enquiry hereafter, when we come to consider the evidence that hath been given, Whether it be good proof of what it is brought for?

Dr. *Sayer.* We shall reserve our objection to the last.

Sol. Gen. They may reserve what observations they please; it is an objection to be made now, or not at all.

L. *Lechmere.* It would be of some service to prevent mis-spending your lordships' time, if the noble lord would distinguish between objections and observations; for a great deal of time has been taken up in observations on evidence, which are proper afterwards on the defence.

Mr. *William Thompson* called.

Serj. *Pengelly.* Mr. Thompson is one of the gentlemen, who, by the consent of the lord within the bar, as well as of the rest of that committee, did examine into the accompts of the Masters in Chancery; and we beg leave to ask him, In the accompt delivered in before the noble lord himself, what appeared to be the deficiency upon Mr. Borret's accompt?

E. of *Macclesfield.* If it does appear by those accounts, those accounts may be produced before your lordships, and your lordships may be judges; but I beg they may not insist upon this gentleman giving his opinion, in order to affect me with his collections or inferences upon them.

Sol. Gen. The original accompts are here. They are on your lordships' table. It will be proper to examine this gentleman as to that.

Mr. *Plummer.* I beg leave to make one observation, and I believe it may prevent mis-spending your lordships' time. They make an objection to this evidence, as if your lordships were going to try how the deficiency was made up; whereas your lordships are only trying, whether there was or was not a deficiency.

E. of *Macclesfield.* If the accompts are before your lordships, and lie upon your lordships' table, and he only declares to your lordships his observations on those accompts, for your lordships ease, and to save you some trouble, I have no objection to it.

Serj. *Pengelly.* Upon the stating the accompt, which we apprehend is a matter of evidence, when a gentleman computes the sum on one side, and the sum on the other side, we desire to know what appears to Mr. Thompson to be the deficiency?

Thompson. I can't rely upon my memory for the sum, but I have in my hand a report made to the committee of council, that I signed with my name; by which it appears, that Mr. Meller, at several times, paid to Mr. Borret 120,000*l.* That Mr. Borret paid out to the several suitors 77,485*l.* and I find the Charge remaining on Mr. Borret's office unpaid to the suitors, is 42,515*l.* These are the sums that, upon examination of the accompts, we find to be right.

Dr. *Sayer.* If the gentlemen that are managers for the House of Commons have done, we beg leave to ask Mr. Thompson this question, Whether on the making up of these accounts, any executor or administrator of Mr. Borret was present?

Thompson. When we examined the accounts, we understood there was no representative of Mr. Borret; and I think it is put in the report, that we could get no account but from his clerk, Mr. Godfrey and Mr. Bennet, two Masters in Chancery.

Com. Serj. What books were they he formed those accounts from?

Thompson. The first charge, or the charge from Mr. Meller on Mr. Borret, was taken from Mr. Meller's account. The 77,485*l.* paid out was an account from Mr. Borret's books, made up by his clerk, under the inspection of Mr. Godfrey and Mr. Bennet.

Com. Serj. I desire he may be asked, Whether he himself knew those to be Mr. Borret's books, or only by relation from other persons?

Thompson. Only by relation from his clerk.

Com. Serj. Then, with submission, they must go further before the balance can be taken notice of. They must establish that these books are Mr. Borret's books.

Sol. Gen. We have done with Mr. Thompson.

Serj. *Pengelly.* We hope the counsel for the Earl impeached, will be pleased to read his own Answer, wherein he owns that Mr. Godfrey and Mr. Bennet were employed by himself to take the effects of Mr. Borret into their custody.

E. of *Macclesfield.* If I apprehend Mr. Thompson, he says, the charge is taken from the account given by Mr. Meller himself. I desire to know, Whether Mr. Meller was not called upon to discharge himself of the money he had in his hands, before he surrendered to Mr. Borret; and whether that was not the occasion of his being there?

Thompson. I apprehend Mr. Meller was sent for, in order to know the state of the office at the time he left it.

E. of *Macclesfield.* So he gave an account how it stood at the time of quitting the office, and what he paid over to Mr. Borret?

Thompson. I apprehend he did so.

Serj. *Probyn.* I desire Mr. Thompson may be asked, Whether the 77,485*l.* discharge, was taken from the relation of Mr. Godfrey and Mr. Bennet, or from the books themselves: or whether he did examine the books himself?

Thompson. I went through every particular of Mr. Meller's accompt; as to the other, my memory does not serve me to answer particularly.

E. of *Macclesfield.* Whether they did not report at that time, they could not take the accompts perfectly, for want of an administrator?

Thompson. I believe, my lords, we might do so; and I believe, if the Report is turned to, it will appear so. I don't mention these sums as an exact accompt, they were the best accompts we could get.

Mr. *Sayer.* The question I would trouble your lordships with, because it is of great consequence, is, Whether the accompt of 120,000*l.* which lies as a charge upon Mr. Borret's office, is not the accompt which Mr. Meller is to discharge himself by, and of those effects for which he otherwise remains responsible?

Thompson. How far Mr. Meller is to discharge himself, I am no competent judge. This is the accompt that the office, as I apprehend, stood charged with.

Dr. *Sayer.* To put the question shorter, whether it is the accompt of Mr. Meller, as predecessor in the office to Mr. Borret?

Thompson. I apprehend it so.

Mr. *Plummer.* Whether Mr. Meller did not produce receipts for Mr. Borret, for this whole accompt?

Thompson. To the best of my remembrance, Mr. Meller did produce vouchers for every article set down in his accompt.

Serj. *Probyn.* I desire he may be asked, whether there were any proofs made of these vouchers?

Thompson. What the gentleman means by proofs, I don't know. They were receipts under Mr. Borret's own hand for the whole sum.

Com. Serj. I desire he may be asked, whether he is acquainted with Mr. Borret's handwriting; or whether there was any proof made of it?

Thompson. Mr. Borret's clerk was there, and affirmed every receipt to be Mr. Borret's handwriting.

Com. Serj. I would ask, if there was any oath made, or if it was only upon his word?

Thompson. If your lordships will give me leave to have recourse to the Report, I will recollect myself. I can't say whether Mr. Borret's clerk was sworn or no, I think he was; I don't find it set down in the Report.

Mr. *Lutwyche.* I would beg leave to ask this question; this Report, that is signed by him as one of the committee, whether it was laid before the council, and to whom delivered in, in order to be laid before the council?

Thompson. This very Report was delivered by Mr. Baron Gilbert to the committee of council.

E. of *Macclesfield.* I hope it is the same that is before your lordships, if it is not, I can't tell what to say to it.

Serj. *Pengelly.* This is the original Report, of which your lordships have a copy on your lordships' table,

E. of *Macclesfield.* I desire it may be delivered in, and lie upon the table.

Mr. *Godfrey* called.

Sol. Gen. We desire Mr. Godfrey may be asked, whether upon the death of Mr. Borret, he was directed to take an account of the state of his office?

Godfrey. Upon the death of Mr. Borret, my brother Bennet and I were desired by my lord Macclesfield to look into the affairs of Mr. Borret's office, and see how the accompt stood; and likewise to see what securities were in the Bank, in the Exchequer, and East India Company, and other funds. Accordingly, I went to the Bank and the East India house, and took an account of what I found stood in his name there. I believe Mr. Bennet will satisfy your lordships, he went to the Exchequer and other places. I applied first to the Bank, to Mr. Hanger, who was then deputy governor, and he was so kind to send an officer to search the several books, and I had this accompt: there was in Mr. Borret's name 1,000*l.* in 5*l.* per cent annuities, 1,000*l.* Bank stock. And then I went to the East India house, and there was 240*l.* East India stock in his name. This was all the account I took.

Sol. Gen. In what state was the office in general?

Godfrey. I did not look over the office-books. I believe Mr. Bennet, who was with me, took that charge upon him: I believe he is capable of giving you an account. I did not see the office-books at all: but upon my talking with Mr. Bennet about it, he found there was more stock and security in Mr. Borret's name in the several funds, than he could find him charged with in the books of the office.

Serj. *Pengelly.* When Mr. Thompson and

the other gentleman enquired into the particular effects, whether, when he appeared there, the accompt he gave in was a true accompt?

Godfrey. To the best of my knowledge, in relation to Mr. Borret's, it was.

Sol. Gen. I desire one question more, whether it is usual to enquire into the effects of a predecessor, unless there is reason to suspect a deficiency?

Godfrey. I don't know whether it is usual, but it is extremely necessary. When this gentleman was expiring in such an office, having no friends in town, nor any intimate acquaintance besides myself to take care of his effects, I thought I ought to take some care, that his office should not be plundered; and that was the only reason that induced me to take care of his effects, that they might not be embezzled.

Serj. *Pengelly.* Whether they did not find the office in great confusion?

Godfrey. In that part of his office which was at his chambers in the Temple, we found his papers in great confusion, lying without any method or order. We collected them as well as we could, and what things we found of value, or belonging to the suitors, as goldsmiths' notes, notes under hand for money, we put them upon a file; and that file, together with other little moveables we found belonging to him, as rings, and a watch, were all put in a bag, and sealed up by Mr. Bennet and myself, Mr. Grant, who was Mr. Borret's lady's father, and Mr. Grant the clergyman, who was his lady's uncle; and we put them into a trunk, and locked them up; and they are now at my house.

Sir *Wm. Strickland.* I would ask him, whether the next of kin did not refuse to take out administration, because of the deficiency.

Com. Serj. Here can be no answer, but yes, or no; I hope, gentlemen will not ask such questions.

E. of *Macclesfield.* I desire he may be asked, whether any advice was given concerning taking out, or not taking out administration?

Godfrey. Mr. Grant, the uncle, said, that he was a creditor of Mr. Borret's, by bond, (which indeed I was surprised to hear, I did not think he owed any man a shilling) between 6 and 700*l.* And being so great a creditor, he thought if he took out administration he should be paid first. I told him as Mr. Borret had been in an office of great weight, and there was a great trust, I could not tell how matters stood in the office; and if there should prove a deficiency, I believed he would involve himself, in taking out administration, in much more trouble than he was aware of.

Sir *Wm. Strickland.* I desire he may be asked, If he did not apprehend there would be such deficiency?

Godfrey. I did not apprehend at that time there would be any deficiency. He had been in the office about four years; he had had opportunities of reimbursing himself: he had a handsome fortune of his own when he came in, and had with his lady 3,000*l.* therefore I was under no apprehension of a deficiency.

E. of *Macclesfield.* I beg leave I may ask Mr. Godfrey, whether he was acquainted very well with the affairs of Mr. Borret, and knew his circumstances?

Godfrey. I have had some years acquaintance with Mr. Borret. As to his real estate, I was not perfectly acquainted with it: I had it only by common relation, that he had an estate of about 400*l.* a year, or rather better; but I don't know it of my own knowledge.

E. of *Macclesfield.* As to his real estate, you say you don't know it of your own knowledge; whether are you particularly acquainted with his personal estate?

Godfrey. No, my lords.

E. of *Macclesfield.* I desire Mr. Godfrey to inform your lordships, what he said to me after Mr. Borret's death, whether there would be a loss, or not a loss in Mr. Borret's office.

Godfrey. I can't at present remember what discourse passed between the noble Earl and myself, upon the death of Mr. Borret, I believe I might say, and it was my opinion, that there would be no deficiency. I have heard his estate was such, and I knew very well that his lady's fortune was so much, and that he disposed of a place, which was the Filazer of Yorkshire, for which he had, as I have been informed, 4,200*l.* And these were the reasons that induced me to believe there would be no deficiency; and I knew very well that I could say of my own knowledge, Mr. Borret lived at no extravagant rate; for I am sure all the time he was a Master, and in town, he never spent 200*l.* a year.

Sir *Wm. Strickland.* He says, he has heard he had 400*l.* a-year in land: does he not as well know that that estate was settled upon his family and children?

Godfrey. I have heard that, upon his marriage, some part of it was settled, but whether all be settled, or not, I can't tell.

E. of *Macclesfield.* It seems this gentleman says he did not spend 200*l.* a-year. How came you to imagine that he should spend no more than 200*l.* a-year?

Godfrey. He told me so.

E. of *Macclesfield.* Where was his family?

Godfrey. In the country.

E. of *Macclesfield.* With whom?

Godfrey. With his lady's father; and when he was in town, he had private chambers in the Temple, and only kept one servant, and one horse.

E. of *Macclesfield.* I desire he may be asked, whether he did not once intend and propose himself to take out administration to Mr. Borret, and if he did not take some steps towards it?

Godfrey. I had so great a concern for the office, and the securities not being transferred to a proper hand, that I was willing to take out administration, rather than there should be any clamours on account of the neglect of business in the office. But, my lords, upon considering the matter, I did not apprehend that I was

so fit a person for that purpose. I was not very young myself, I had two children, and those young: I apprehended that if I should drop off before things were settled, the case might be still the same as I found them: therefore, I desired I might have somebody joined with me in this troublesome affair, for I did foresee a good deal of trouble in it. However, I said I was willing to engage in it, if my brother John Bennet were joined with me, rather than there should be any clamour upon the office; and I persuaded him to do the same; and accordingly, I went down to the Commons, to see if administration could be granted to us two. The relations in the country, and those people concerned for them, were very willing that administration should be granted to Mr. Bennet and myself; and accordingly process was sent to cite the children; and that done, as I am informed, sentence was given, that I and my brother Bennet should have the administration. But then this unhappy enquiry coming out, we did not know what situation we might be in, and for that reason I declined it.

E. of *Macclesfield.* Has Mr. Borret a wife living, or is she dead?

Godfrey. His lady died a month before him.

E. of *Macclesfield.* What age are his children?

Godfrey. The eldest is about three years old, and the youngest about two, as I am informed; I never saw them.

Mr. *John Bennet* was called and sworn.

Sir *Wm. Strickland.* The question I desire he may be asked is, whether he did not, upon the enquiry into the affairs of Mr. Borret's office, apprehend that there was a deficiency?

J. Bennet. I did hear it reported that there would be a great deficiency in that office, at the time I was desired by my lord Macclesfield to look into it; and I was likewise informed soon after, that there was like to be no deficiency.

Sir *Wm. Strickland.* I desire he may be asked, how he found it?

J. Bennet. I found his papers and accompts in the utmost confusion. His accompts were mostly in loose papers: there was one book indeed, but that extended no farther than to the Christmas before his death, which was near three quarters of a year before he died. Mr. Godfrey desired I would join with him in taking out administration; after a good deal of importunity I did consent.

Sir *Wm. Strickland.* I desire one question more. He says he was informed soon after, there was like to be no deficiency in the office. I desire to know, whether he did inform the earl of Macclesfield there was like to be no deficiency?

J. Bennet. No, I did not; but I did inform him, that there was not so great a deficiency as was reported, which was 25 or 30,000*l.* I could make no regular computation, every thing was in the utmost confusion, as I acquainted my lord.

E. of *Macclesfield.* I desire he may be asked, whether he did not inform me, that he found more stock in Borret's name, in the books of the several companies, than he could find charged upon him in the office?

J. Bennet. Not to my remembrance; for I did not look into the stocks of the companies; that was Mr. Godfrey's business.

E. of *Macclesfield.* You then looked into his books?—*J. Bennet.* I did so.

E. of *Macclesfield.* Then upon your looking into his books, and Mr. Godfrey's looking into the companies books, and comparing them together, I desire you would inform my lords, whether you did not take more to be in his name, than he was charged with in the books of the office?

J. Bennet. Upon Mr. Godfrey's account there appeared, upon casting it up, to be more stock in his name than the securities he was answerable for to the Court.

E. of *Macclesfield.* He has said, he could not tell what the deficiency would be, because he could not make up a regular accompt; I desire he may be asked, whether he did not tell me that he believed there would be no deficiency?—*J. Bennet.* No, I did not.

E. of *Macclesfield.* Did you not, upon your oath?

J. Bennet. After Mr. Borret's death, I did say to several people, when they were clamorous (but whether I said so to my lord Macclesfield, I can't tell), that upon the best account I could make of his confused affairs, there would be a deficiency of 4 or 5,000*l.* and I believed not more.

Com. Serj. Though Mr. Bennet did not look into the books of the public companies; yet whether he did not examine at the Exchequer upon that occasion?—*J. Bennet.* Yes.

Com. Serj. I desire he may be asked, whether he did not tell Mr. Godfrey afterwards, that upon what appeared, there would be no deficiency?—*J. Bennet.* No.

Mr. *Plummer.* Mr. Bennet has said, upon comparing the books, he found more stock in Mr. Borret's name, than he was charged with to the Court. I desire he may be asked, if he found more stock than the money and the effects he was charged with to the Court?

J. Bennet. No, my lords, the best calculation I could make, was, that there was near 4 or 5,000*l.* deficient.

Serj. *Pengelly.* We shall leave this Article, with this observation, that Mr. Borret died insolvent, and a debtor to the suitors of the Court, of which we have given full evidence; and that Mr. Thurston was admitted into that office by the Earl impeached, without procuring satisfaction to the suitors of the Court, or security for their debts: if that was done, it lies upon the noble lord to prove it.

Mr. *Onslow.* My lords, the Commons having made good that part of their Impeachment, by which the earl of Macclesfield stands charged

with extorting many great and extravagant sums of money, for the admission of several of the Masters of the Court of Chancery into their respective offices: we shall now proceed, my lords, to support the Eleventh and Twelfth Articles, which contain many corrupt practices, used by the said Earl, to advance and encrease the illegal gain, arising to himself from the sale and disposal of those employments.

The Eleventh Article charges him, my lords, with admitting several persons to those offices, who, at the time of their admission, were of small substance and ability, and highly unfit for so great a trust, as by the nature of their employments at that time was to be placed in them.

The Masters in Chancery, my lords, have, of late years, been the treasurers of that Court; the repository of the money and the effects brought into the Court; brought there, my lords, not by the choice and consent of the parties concerned, but by the compulsion of the Court, under the faith of a better security: but so, my lords, has it fallen out, that this pretended security has served only to delude the suitors of the Court into a false quiet, whilst their estates have been made a prey to infamous stock-jobbers, and wantonly wasted, by some of them, to support the extravagancy of their living.

The fortunes, my lords, of orphans and lunatics are, from the compassion of our government, a part of the care of the Court of Chancery; and have been lodged in the hands of the Masters, as a place of sanctuary, till the owners should become capable of managing their estates themselves: when they come, my lords, to require their fortunes, he, who was the supreme judge in a court established for their relief; he, who was the great guardian of infants and lunatics, will be found to have suffered an advantage to be taken of the weakness of the one, and the misery of the other, to render their helpless condition a means of their ruin, instead of their protection.

This, my lords, is the nature of the trust reposed in the Masters of the Court of Chancery, and this the use they have been permitted to make of it. The greatness of the trust will shew your lordships, what precautions a Lord Chancellor ought to have taken, as to the officers admitted into these employments; and the abuse of this trust, will demonstrate how little his care has been, whose duty it was to provide persons of integrity, and responsible men, for the execution of these offices; but who, my lords, unfortunately for the suitors, and to the dishonour of the public justice of the kingdom, presided seven years in the Court of Chancery; in which time, a deficiency of above fourscore thousand pounds, has happened upon the Masters he admitted; and, what perhaps may be worthy of your lordships' particular notice, of the six Masters on whom there appears to be a deficiency, four of them were admitted by him. If our evidence, my lords, as to this Article, rested only on the proof of these deficiencies, it would, we apprehend, be sufficient to evince what the Commons have here alleged. That persons of small substance and ability, have, by the Earl at the bar, been preferred to be Masters of the Court of Chancery. But, my lords, to bring this charge still nearer to the Earl, we have it in proof, and strongly so, that little or no enquiry was ever made by him, into the characters and circumstances of those he admitted into these offices. That in fact, my lords, they were men of very mean fortunes. No security ever required of them; which still made it the more necessary, that their own ability should be thoroughly looked into and well approved. We shall shew your lordships, that they were entrusted, some of them, with forty, sixty, one of them, I think, to the amount of a hundred thousand pounds in cash and securities: and yet, my lords, no other use was made of this, but to enhance the price of the office, when it was to be sold and bartered, for the benefit of the Earl. The argument used, to bring up any person to the rate the Earl insisted on, was the largeness of the sum to be transferred to the purchaser. The temptation generally succeeded: the reason your lordships will easily imagine; and when the price was thus agreed upon, no other qualification was required, the person stood right in the Earl's opinion, and was thought proper to be associated to him.—Were it only that, my lords, the Commons would not have troubled your lordships with this Article, but to be associated to him in the administration and execution of justice, and to be entrusted with the fortunes of whole families, whose only support, perhaps, depended on the ability and integrity of these men: how well, my lords, the Earl consulted in the appointment of these officers, the honour of that public justice they were to assist him in; what regard he has had for the interest of those, whose estates he thus flung into their hands, the evidence we shall produce to your lordships, and your own observations upon it, will abundantly shew, notwithstanding his flat denial of this part of the Charge.

I will trouble your lordships but with one particular more in this Article, and it is what the Article concludes with. A remarkable declaration by the Earl, of the ability, and other qualifications of the Masters, particularly those promoted by him; and this happened, my lords, upon as remarkable an occasion? A very honourable person, then a judge also in that Court, and now justly at the head of it, having seen with indignation, the havoc that was making of the effects of the suitors; out of compassion to them, and from a zeal for justice, endeavoured to put some stop to it, in an instance that came within his cognizance. An order was made by him, my lords, on one of the Masters, to allow some profit to a suitor arising from her own money, which the Master designed, as it was thought, to have sunk to his own use. The Master thought himself aggrieved, and fled for redress to his patron, the then Lord Chancellor, the Earl now under

your lordships' consideration; and he was secure in so doing, for the order was immediately discharged; and then it was, my lords, to obviate the clamours that were breaking out from all sorts of people against the Masters, that the Earl did in open court, then sitting as Lord Chancellor, in his judicial capacity, declare, that the present Masters were men of as great probity, fortunes, and abilities, as any set of Masters that ever were in that Court; and that he had had the satisfaction of putting in most of them himself. As this, my lords, was spoken in general of them all, but with a peculiar regard to those he had admitted; the Commons have laid it to be to the manifest deceit and injury of the suitors of the Court, which they are justified in doing, by the thing itself being false, by the proof we have, my lords, that the Earl must know it to be false, and by the resemblance it bears to that series of other mean artifices he had long been practising to give a counterfeit credit to these corrupt officers. A credit, my lords, he was soon to receive some benefit from: for the witness will inform your lordships, that a vacancy of a Master in Chancery happened the day before this significant and memorable declaration was made.

My lords, the Commons have made this Article a part of their Charge against the earl of Macclesfield, as being the great source of the evil that is likely to befal the unhappy sufferers in the Court of Chancery; and as it was the means he made use of to draw to himself those extravagant sums of money we have proved him to have received: for men of small fortunes, my lords, as they have more temptations, so they run less hazard than others in preying upon money that is entrusted with them; and it is this, my lords, that encourages such men to give exorbitant rates for employments which afford them those opportunities.

Thus, my lords, I have opened to your lordships the substance of the Eleventh Article, and the nature of our proof upon it. The Twelfth Article will be opened and enforced to your lordships by the gentleman who is to come after me. I shall therefore detain your lordships no longer than to make this one observation, that as the office of a Master in Chancery is of great trust and importance, that as these officers are appointed to this trust by the sole discretion of the Lord Chancellor; and that the effects of the suitors of the Court are deposited in their custody, by his immediate orders, which he might have placed in safer hands if he had thought fit; he becomes by all this in the nature of a superior trustee for, and is therefore justly answerable to, the suitors for the behaviour of these men. So, my lords, in some degree may the public be thought answerable for him; which makes his guilt without measure, who has thus brought a disgrace upon his country, by prostituting one of its highest courts of justice to his own avarice and corruption, to the rapine and corruption of his inferior officers, and to the undoing of those, who, by the constitution of the kingdom, have been forced into his power.

Mr. *Palmer*. My lords, the gentleman that spoke last has fully opened the evidence of the Eleventh Article, and has shewn to your lordships, that for his own private and illegal gain, the impeached lord did commit the money and effects of the suitors, to men no way of substance sufficient for so great a trust. The 12th Article will lay before you a most corrupt practice, used without controul, while the Earl was Chancellor, by which this illegal gain was immensely increased; and whereby those Masters of whom the Commons complain in the preceding Article, were tempted and enabled to buy their offices at extravagant prices.

Your lordships will see what methods were used on the admission of Masters in Chancery: great sums were paid for the surrenders and admissions, and those sums were taken from the money of the suitors; sometimes the purchase money was borrowed: but after admission, repaid from the cash of the office; sometimes the value of the purchase was left in the surrendering Master's hands: whatever different ways were taken at the beginning, they all tended to this; the suitors were to make the purchaser easy, and the people were persuaded to bid high, by being told how easily the largest sums could be raised.

It was a common recommendation to a purchaser, to tell him how much cash was in the office; and that he need not be afraid to make any contract good; money would be ready as soon as he was admitted: your lordships will see the consequences of such recommendations. Masters did offer, and give more than could be presumed they were worth, the suitors' money was at hand to make good the bargain; and these are the Masters in whose offices appear the greatest deficiencies.

It will appear to your lordships, that Mr. Kynaston, and Mr. Thomas Bennet, procured their places in this manner. Mr. Kynaston discharged a bond of 6,000*l.* to his predecessor, by giving a receipt of the same value. Mr. Bennet gave a receipt to his predecessor for 10,000*l.*: both acknowledged a transfer of so much of the suitors' money, the one received but 9*l.*, and the other 1,500, the rest was kept back as part of the price of their office; and is now a part of their deficiencies. How great their deficiencies are, may be observed to your lordships; Mr. Bennet's is near 10,000*l.*, and Mr. Kynaston's above 20,000*l.*

This is the practice the impeached lord, in his Answer, declares himself totally ignorant of, and is what the Commons declare he knew, connived at, and encouraged; and as they have been always careful to aver nothing but what they are satisfied will be fully maintained, this Article will be supported by proofs, that the impeached lord was well informed of what he now denies the knowledge of; that it was the subject of his discourse, and that he feared, and endeavoured to prevent a discovery.

And your lordships will find him observing on the accounts of some of the Masters, as they were given in on the late enquiry, That they were given in in the worst manner; that they should convince the world that they paid for their places out of the suitors' money; and, that they would at last discover what he had always, when asked, taken care to deny.

The impeached lord admits, in his Answer, That he never caused any schedules to be made of the suitors' effects, to be transferred over to succeeding Masters: that it was what his predecessors never did before him, and that if the consequences alleged by the Commons, have arisen from this practice, or the not ordering such schedules, he thinks he is not criminal.

My lords, the Charge of the Commons is general, that he knew the abuse, and took no care to reform it; if he had taken care that the effects of the suitors should have been transferred by schedule; if he had appointed any one to overlook the transfer; if he had taken any method at all to be assured that the effects of the suitors were duly made over according to this order of transfer, the Commons would not have charged as they have done, and perhaps he had not at this time appeared so nigh your lordships' bar.

But if the impeached lord thinks he is justified by saying, it was not his duty, and therefore the omission no offence: the Commons aver, in their Article, that it is the duty of the Chancellor of Great Britain, to superintend the Masters and their accounts; and it is submitted to your lordships, whether he is not criminal, if he suffers money deposited by the orders of his Court in the hands of the Masters, to be, without order, conveyed or left in private hands.

I shall say no more to your lordships on this Article, but leave the proof of it to the evidence.

Serj. *Pengelly.* My lords, the proof in support of these Articles, will go to them both promiscuously. In the first place we beg leave to shew to your lordships, the several orders of Court, which state the deficiencies of several Masters.

Mr. *Ralph Paxton* sworn.

Serj. *Pengelly.* We desire he may be asked, whether the papers he produces, are true copies of the orders, examined by the books in the office.

Paxton. My lords, they are true copies, I examined them?

Lords Com. Ordo Curiæ.

Veneris 29 Die Januarii, 1724-5.

Whereas, by an order made by the right hon. the late Lord High Chancellor of Great Britain, the 17th day of December last, it was *(inter al')* ordered, That the Bank notes, and other effects therein specified, produced before Mr. baron Gilbert, Mr. justice Denton, and Mr. justice Raymond, sir Nath. Gould, Mr. Thompson, and Mr. Hanger, three of the directors, and one of them deputy governor of the Bank of England, by the several Masters of this Court, upon the examination of their accompts, for, or towards answering the balance of cash admitted by their said accompts, to remain in their respective hands belonging to the suitors of this Court, should be deposited in several chests, and that then the said chests should be locked up and left in the custody of the Bank of England, in such manner as by the said order is provided: and whereas, the Masters had, in their several accompts, given in particulars of stock and of annuities, transferable in the books of the several companies, standing in their names, which belonged to the several suitors of this Court or as their own proper stock annuities, by which part of the balance of cash in their hands might be made good, or secured. It was further ordered, That they should each of them, forthwith, deliver into the respective companies, a declaration in writing, wherein such stock in each respective company, or the annuities there transferable, as by their respective accompts appeared to belong to the suitors of the Court, and likewise the stock and annuities by them respectively proposed towards making good, or securing their balance of cash, or so much thereof as should equal the balance of their said accompts; in case they had in their names more than sufficient for that purpose, should be declared to be upon trust to attend the orders of this court: and it was further ordered, That the said several Masters should forthwith give to the said Mr. baron Gilbert, their post accompts of their receipts and payments since the former accompts; and by a subsequent order of the 21st day of the said December, It was ordered, That the several and respective Masters, whose effects so ordered to be secured, did not amount to the whole balance of the cash admitted by their accompts, to be in their hands, should forthwith secure the rest of the balance of the cash appearing to be due on their respective accounts, by depositing in like manner Bank notes, or other effects to the amount thereof, or enter into a recognizance in a competent sum of money, with two or more sureties to be approved of by Mr. baron Gilbert, Mr. justice Denton, and Mr. justice Raymond, or any two of them, for duly answering from time to time as this Court should direct, such sum and sums as the remaining deficiencies of their said respective balances amount unto. And whereas, Mr. Edward Conway, one of the Masters of this Court, did, on the 19th instant, attend the right hon. the Lords Commissioners for the custody of the great seal of Great Britain, and acknowledge that he was debtor to the suitors of the Court on the balance of his cash accompt, the sum of 13,039*l.* 4*s.* 4*d.*½, and that he had brought into the chest the sum of 3,000*l.* only, so that he remains debtor on the said cash balance, the sum of 10,039*l.* 4*s.* 4½*d.* and that since making the said former orders, he had sold 3,500*l.*

South Sea stock, in the cause between the lord and lady Faulconberg, which was intended a security for the sum of 3,425*l.* and that he had since paid off only the sum of 2,593*l.* 9*s.* 3*d.* pursuant to the orders of this Court in that cause, so that there remained the sum of 831*l.* 10*s.* 9*d.* in his hands, to be applied to the parties concerned in that cause; and that he had since sold 2,000*l.* South Sea annuities stock, part of the sum of 17,950*l.* South Sea annuities stock, belonging to the suitors of the Court in several causes, which he ought to re-place. Their lordships did thereupon order, That the said Mr. Conway, should, in a week, deposit the sum of 10,039*l.* 4*s.* 4*d.*½ and also the said sum of 831*l.* 10*s.* 9*d.* belonging to the said cause of Faulconberg and Faulconberg in Bank notes, or money in his chest at the Bank of England, and also should re-place the said sum of 2,000*l.* South Sea annuity stock, or that he should enter into a recognizance of 26,000*l.* with two sufficient sureties, to be approved of by one of the Lords Commissioners for the custody of the great seal of Great Britain, for answering the said sums, and replacing the said 2,000*l.* South Sea annuity stock, in such manner as this Court should direct: and this Court being yesterday informed by Mr. Attorney General, on behalf of the suitors of this Court, that the said Mr. Conway had not deposited either of the sums aforesaid, or entered into a recognizance with two sureties, as by the said order he was directed: it was thereupon ordered that he should on this day attend the Court, to shew cause why he did not yield obedience to the said order. And he now attending accordingly, and admitting that he had not deposited either of the sums aforesaid, nor replaced the said 2,000*l.* South Sea annuity stock, or given security with two sureties, as by the said order is required: and whereas he did formerly, upon examination of his accompts, produce to the persons who inspected the same, Bank bills, and notes, sufficient to make good the said sum of 13,039*l.* 4*s.* 4*d.*½ being the whole balance of his cash accompts, but had only deposited 3,000*l.* part thereof in pursuance of the said order; and it being several times demanded by the Court, whether he did know or remember the names of the person or persons from whom he had the said Bank notes, or any of them, or did know or remember the names of the person or persons to whom he had since paid or delivered them, or any of them, he declined giving any direct answer to the said question relating to his own proper knowledge and remembrance; but upon oath said, it was impossible for him to answer the same; whereupon, and upon hearing of Mr. Attorney General and Mr. Solicitor General on behalf of the suitors; and what was farther insisted on, this Court doth declare, that the said Mr. Conway is guilty of very high contempts, and doth therefore do, for his said contempts, stand committed to the prison of the Fleet; and that for making provision for the execution of his office, and that no prejudice may happen to the suitors of the Court, by reason of the said commitment, he do, in the custody of the warden this afternoon, deliver all his books and papers belonging to his office, unto Mr. Holford, one other of the Masters of this Court, who is to act therein as he the said Mr. Conway ought to have done during his commitment; and the clerk of Mr. Conway is to be at liberty, if he thinks fit, to attend Mr. Holford therein, and Mr. Conway is at liberty from time to time to make such proposals to the Court, for making good his deficiency, as he shall think proper.

R. P. Examined 6th of May, 1720, by Book of Entries, Cur' Cant' Letter B.

LORDS COM. ORDO CURIÆ.

Mercur' tertio Die Febr. Ann. Regni Georgii Regis undecimo.

Whereas, by an order of the 29th of Jan. last, for the reasons therein contained, it was ordered that Mr. Thomas Bennet, one of the Masters of this Court, should then, sitting in the Court, give his own recognizance to be taken by Mr. Holford, one other of the Masters of this Court in the penalty of 18,150*l.* conditioned to answer and pay the sum of 9,075*l.* therein mentioned, in such manner as this Court should direct; and that upon his so doing, the time for his performing of an order of the 12th of Jan. last, for depositing the said 9,075*l.* or procuring two or more sureties, to enter into a recognizance of the penalty aforesaid, as in the said order is mentioned, should be enlarged till this day: and if he should procure such sureties to enter into such recognizance, he was first to give the names of the intended sureties to Mr. Paxton (solicitor on behalf of the suitors of this Court), to the end he might enquire after their abilities; and the said Mr. Thomas Bennet was this day to attend the right honourable the lords commissioners, for the custody of the great seal of Great Britain, when such farther order should be made as should be just. And the said Mr. Thomas Bennet this day attending their lordships, in the presence of Mr. Attorney General, and Mr. Solicitor General, on behalf of the suitors of the Court; and the said Mr. Thomas Bennet, now delivering into Court a particular of several estates which he proposed to assign and convey as the Court shall direct, in trust for the suitors of the Court, and submitting to be examined upon interrogatories, for discovery of all other estate he has, both real and personal, and that the same shall be also assigned and conveyed to the same trust: their lordships do therefore order, that the time for the said Mr. Thomas Bennet's giving his recognizance with two or more sureties in the penalty aforesaid, be enlarged until Wednesday next, at which time the said Mr. Thomas Bennet is to attend in Court, when such farther order shall be made as shall be just. But in

the mean time, he is to assign and convey the several estates by him now proposed, unto the said Mr. Holford, as he, the said Mr. Holford, shall approve and direct; and is also within that time to produce and leave with the said Mr. Holford, all deeds and writings in his own hands relating thereto; and so far as he is able to procure the mortgagee and annuitant, to produce and leave with the said Mr. Holford, the several deeds and writings in their respective hands relating to the said persons. And the said Mr. Thomas Bennet is also, within the same time to be exahined upon interrogatories before the said Mr. Holford, for discovery of all other, his real and personal estates, and is also to assign and convey the same to the said Mr. Holford, as he shall approve and direct. And what estates shall be by him, the said Mr. Thomas Bennet, so assigned and conveyed to the said Mr. Holford, as aforesaid, the same are to be upon trust for the suitors of the Court, as the Court shall direct; and the said Mr. Paxton is forthwith to prepare and lay interrogatories before the said Mr. Holford for the purpose aforesaid.

R. P. Examined 6th of May, 1725; by Book of Entry, Cur' Canc' Letter B.

ORDO CURIÆ.

Martis Decimo Nono Die, Januarii, 1724.

Whereas, by an order made by the right honourable the Lord High Chancellor of Great Britain, the 17th day of December last, it was (amongst other things) ordered, that the Bank notes and other effects therein specified, produced before Mr. baron Gilbert, Mr. justice Denton, and Mr. justice Raymond, sir Nathanael Gould, Mr. Thompson, and Mr. Hanger, three of the directors, and one of them deputy governor of the Bank of England, by the several Masters of this Court, upon the examination of their accounts, for, or towards answering the balance of cash admitted by their said accompts to remain in their respective hands belonging to the suitors of this Court, should be deposited in several chests, and that then the said chests should be locked up, and left in the custody of the Bank of England, in such manner as by the said order is provided. And it was further ordered, that the said several Masters should forthwith give to the said Mr. baron Gilbert, post accompts of their receipts and payments since their former accompts. And by a subsequent order of the 21st day of the said December, it was ordered, that the several and respective Masters of this Court, whose effects, so ordered to be secured, did not amount to the whole balance of the cash admitted by their accompts to be in their hands, should forthwith secure the rest of the balance of the cash appearing to be due on their respective accompts, by depositing in like manner, Bank notes, or other effects, to the amount thereof, or enter into a recognizance in a competent sum of money, with two or more sureties, to be approved by Mr. baron Gilbert, Mr. justice Denton, and Mr. justice Raymond, or any two of them, for duly answering from time to time, as this Court should direct, such sum and sums, as the remaining deficiencies of their said respective balances amount unto. And Mr. Edward Conway, one of the Masters of this Court, this day attending the lords commissioners for the custody of the great seal of Great Britain, and acknowledging that he was debtor to the suitors of the Court on the balance of his cash account, in the sum of 18,039*l.* 4*s.* 4½*d.*; and that he had brought into the chest the sum of 3,000*l.* only, so that he remains debtor on the said cash balance, the sum of 10,039*l.* 4*s.* 4½*d.*; and that since the making the said former orders, he has sold 3,500*l.* South-Sea stock, in the cause between the lord and lady Faulconberg, which was intended a security for the sum of 3,425*l.*; and that he hath since paid off only the sum of 2,593*l.* 9*s.* 3*d.* pursuant to the orders of this Court in that cause; so that there remains the sum of 831*l.* 10*s.* 9*d.* in his hands, to be applied to the parties concerned in that cause; and that he has since sold 2,000*l.* South-Sea annuity stock, part of the sum of 17,950*l.* South-Sea annuity stock, belonging to the suitors of the Court in several causes, which he ought to replace: their lordships do thereupon order, that the said Master Conway, do, in a week, deposit the said sum of 10,039*l.* 4*s.* 4½*d.* and also the said sum of 831*l.* 10*s.* 9*d.* belonging to the said cause of Faulconberg and Faulconberg, in Bank notes or money in his chest at the Bank of England; and also do replace the said sum of 2,000*l.* South-Sea annuity stock; or that he do enter into a recognizance of 26,000*l.* with two sufficient sureties, to be approved of by one of the lords commissioners for the custody of the great seal of Great Britain, for answering the said sums, and replacing the said 2,000*l.* South-Sea annuity stock, in such manner as this Court shall direct.

THO. PARNELL, Dep. Reg.

R. P. Examined 6th of May, 1725, with Book of Entries, Cur' Canc' Letter B.

ORDO CURIÆ.

Mercurii Vicesimo Die Januarii, 1724.

Whereas, by an order made by the right honourable the late Lord Chancellor of Great Britain, the 17th day of December last, it was (among other things) ordered, That the Bank notes, and other effects therein specified, produced before Mr. baron Gilbert, Mr. justice Denton, and Mr. justice Raymond; and sir Nathanael Gould, Mr. Thompson, and Mr. Hanger, three of the directors, and one of them deputy governor of the Bank of England, by the several Masters of this Court, upon the examination of their accounts, for, or towards answering the balance of cash admitted by their said accounts to remain in their respective hands

South Sea stock, in the cause between the lord and lady Faulconberg, which was intended a security for the sum of 3,425*l.* and that he had since paid off only the sum of 2,593*l.* 9*s.* 3*d.* pursuant to the orders of this Court in that cause, so that there remained the sum of 831*l.* 10*s.* 9*d.* in his hands, to be applied to the parties concerned in that cause; and that he had since sold 2,000*l.* South Sea annuities stock, part of the sum of 17,950*l.* South Sea annuities stock, belonging to the suitors of the Court in several causes, which he ought to re-place. Their lordships did thereupon order, That the said Mr. Conway, should, in a week, deposit the sum of 10,039*l.* 4*s.* 4*d.*½ and also the said sum of 831*l.* 10*s.* 9*d.* belonging to the said cause of Faulconberg and Faulconberg in Bank notes, or money in his chest at the Bank of England, and also should re-place the said sum of 2,000*l.* South Sea annuity stock, or that he should enter into a recognizance of 26,000*l.* with two sufficient sureties, to be approved of by one of the Lords Commissioners for the custody of the great seal of Great Britain, for answering the said sums, and replacing the said 2,000*l.* South Sea annuity stock, in such manner as this Court should direct: and this Court being yesterday informed by Mr. Attorney General, on behalf of the suitors of this Court, that the said Mr. Conway had not deposited either of the sums aforesaid, or entered into a recognizance with two sureties, as by the said order he was directed: it was thereupon ordered that he should on this day attend the Court, to shew cause why he did not yield obedience to the said order. And he now attending accordingly, and admitting that he had not deposited either of the sums aforesaid, nor replaced the said 2,000*l.* South Sea annuity stock, or given security with two sureties, as by the said order is required: and whereas he did formerly, upon examination of his accompts, produce to the persons who inspected the same, Bank bills, and notes, sufficient to make good the said sum of 13,039*l.* 4*s.* 4*d.*½ being the whole balance of his cash accompts, but had only deposited 3,000*l.* part thereof in pursuance of the said order; and it being several times demanded by the Court, whether he did know or remember the names of the person or persons from whom he had the said Bank notes, or any of them, or did know or remember the names of the person or persons to whom he had since paid or delivered them, or any of them, he declined giving any direct answer to the said question relating to his own proper knowledge and remembrance; but upon oath said, it was impossible for him to answer the same; whereupon, and upon hearing of Mr. Attorney General and Mr. Solicitor General on behalf of the suitors; and what was farther insisted on, this Court doth declare, that the said Mr. Conway is guilty of very high contempts, and doth therefore do, for his said contempts, stand committed to the prison of the Fleet; and that for making provision for the execution of his office, and that no prejudice may happen to the suitors of the Court, by reason of the said commitment, he do, in the custody of the warden this afternoon, deliver all his books and papers belonging to his office, unto Mr. Holford, one other of the Masters of this Court, who is to act therein as he the said Mr. Conway ought to have done during his commitment; and the clerk of Mr. Conway is to be at liberty, if he thinks fit, to attend Mr. Holford therein, and Mr. Conway is at liberty from time to time to make such proposals to the Court, for making good his deficiency, as he shall think proper.

R. P. Examined 6th of May, 1720, by Book of Entries, Cur' Cant' Letter B.

Lords Com. Ordo Curiæ.

Mercur' tertio Die Febr. Ann. Regni Georgii Regis undecimo.

Whereas, by an order of the 29th of Jan. last, for the reasons therein contained, it was ordered that Mr. Thomas Bennet, one of the Masters of this Court, should then, sitting in the Court, give his own recognizance to be taken by Mr. Holford, one other of the Masters of this Court in the penalty of 18,150*l.* conditioned to answer and pay the sum of 9,075*l.* therein mentioned, in such manner as this Court should direct; and that upon his so doing, the time for his performing of an order of the 12th of Jan. last, for depositing the said 9,075*l.* or procuring two or more sureties, to enter into a recognizance of the penalty aforesaid, as in the said order is mentioned, should be enlarged till this day: and if he should procure such sureties to enter into such recognizance, he was first to give the names of the intended sureties to Mr. Paxton (solicitor on behalf of the suitors of this Court), to the end he might enquire after their abilities; and the said Mr. Thomas Bennet was this day to attend the right honourable the lords commissioners, for the custody of the great seal of Great Britain, when such farther order should be made as should be just. And the said Mr. Thomas Bennet this day attending their lordships, in the presence of Mr. Attorney General, and Mr. Solicitor General, on behalf of the suitors of the Court; and the said Mr. Thomas Bennet, now delivering into Court a particular of several estates which he proposed to assign and convey as the Court shall direct, in trust for the suitors of the Court, and submitting to be examined upon interrogatories, for discovery of all other estate he has, both real and personal, and that the same shall be also assigned and conveyed to the same trust: their lordships do therefore order, that the time for the said Mr. Thomas Bennet's giving his recognizance with two or more sureties in the penalty aforesaid, be enlarged until Wednesday next, at which time the said Mr. Thomas Bennet is to attend in Court, when such farther order shall be made as shall be just. But in

the mean time, he is to assign and convey the several estates by him now proposed, unto the said Mr. Holford, as he, the said Mr. Holford, shall approve and direct; and is also within that time to produce and leave with the said Mr. Holford, all deeds and writings in his own hands relating thereto; and so far as he is able to procure the mortgagee and annuitant, to produce and leave with the said Mr. Holford, the several deeds and writings in their respective hands relating to the said persons. And the said Mr. Thomas Bennet is also, within the same time to be examined upon interrogatories before the said Mr. Holford, for discovery of all other, his real and personal estates, and is also to assign and convey the same to the said Mr. Holford, as he shall approve and direct. And what estates shall be by him, the said Mr. Thomas Bennet, so assigned and conveyed to the said Mr. Holford, as aforesaid, the same are to be upon trust for the suitors of the Court, as the Court shall direct; and the said Mr. Paxton is forthwith to prepare and lay interrogatories before the said Mr. Holford for the purpose aforesaid.

R. P. Examined 6th of May, 1725; by Book of Entry, Cur' Canc' Letter B.

ORDO CURIÆ.

Martis Decimo Nono Die, Januarii, 1724.

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THO. PARNELL, Dep. Reg.

R. P. Examined 6th of May, 1725, with Book of Entries, Cur' Canc' Letter B.

ORDO CURIÆ.

Mercurii Vicesimo Die Januarii, 1724.

Whereas, by an order made by the right honourable the late Lord Chancellor of Great Britain, the 17th day of December last, it was (among other things) ordered, That the Bank notes, and other effects therein specified, produced before Mr. baron Gilbert, Mr. justice Denton, and Mr. justice Raymond; and sir Nathanael Gould, Mr. Thompson, and Mr. Hanger, three of the directors, and one of them deputy governor of the Bank of England, by the several Masters of this Court, upon the examination of their accounts, for, or towards answering the balance of cash admitted by their said accounts to remain in their respective hands

belonging to the suitors of this Court, should be deposited in several chests, and that then the said chests should be locked up and left in the custody of the Bank of England, in such manner, as by the said order is provided. And it was further ordered, That the said several Masters should forthwith give to the said Mr. baron Gilbert post accounts of their receipts and payments since their former accounts. And by a subsequent order of the 21st day of the said December, It was ordered, That the several and respective Masters of this Court, whose effects so ordered to be secured, did not amount to the whole balance of the cash admitted in their accounts to be in their hands, should forthwith secure the rest of the balance of cash appearing to be due on their respective accounts, by depositing, in like manner, Bank notes, or other effects, to the amount thereof, or enter into a recognizance in a competent sum of money, with two or more sureties, to be approved by Mr. baron Gilbert, Mr. justice Denton, and Mr. justice Raymond, or any two of them: for duly answering, from time to time, as this Court should direct; such sum and sums as the remaining deficiencies of their said respective balances amounted unto; and Mr. Kynaston, one of the Masters of this Court, being this day present before the right hon. sir Jeffery Gilbert, knt. one of the lords commissioners for the custody of the great seal of Great Britain, and being examined touching the money and effects for which he was answerable to the suitors of the Court, did admit, that the sum of 31,954*l.* 15*s.* and a farthing, was the cash-balance in his hands, due to the suitors; and that he had deposited in his chest at the Bank, the sum of 4,686*l.* 1*s.* 9*d.* in pursuance of the order of the 17th of December aforesaid; and that he had declared a trust of 300*l.* South-Sea stock for the suitors, which at the present valuation is 360*l.*; so that there remains the sum of 26,908*l.* 11*s.* 3¼*d.* deficient and unsecured to the suitors of the Court; and proposed towards satisfaction thereof, to assign over a debt of 20,850*l.* owing to him from Mr. Delahaye, in such manner as should be thought proper for the benefit of the suitors: but alleged that he was not to be charged with the sum of 7,575*l.* mentioned in his accounts to be part of the aforesaid 26,908*l.* 11*s.* 3¼*d.* Whereupon their lordships considering what was alleged by him, were of opinion, that he was answerable to the suitors of the Court for the said sum of 7,575*l.* and do therefore order, That the said Mr. Kynaston do, in a week, deposit the said sum of 26,908*l.* 11*s.* 3¼*d.* in money or Bank notes, in his chest at the Bank of England, or enter into a recognizance in the penalty of 53,817*l.* with two or more sureties, to be approved of by one of the lords commissioners for the custody of the great seal of Great Britain, to answer and pay the said sum of 26,908*l.* 11*s.* 3¼*d.* in such manner as this Court shall direct.

THO. PARNELL, Dep. Reg.

R. P. Examined the 6th of May, 1725, by the Book of Entries. Cur' Canc' Letter B.

Sol. Gen. The Managers for the House of Commons lay before your lordships these orders, to shew, that the several Masters therein-mentioned were deficient. It will be incumbent on the noble lord to shew, that, when they were admitted, they were of ability proper for such a trust. We now proceed upon the declaration that was made on the 21st of January last was twelve-month, and desire that Mr. Waller may be called.

Mr. *Waller* sworn.

Sol. Gen. My lords, we desire he may be asked, whether he applied to my Lord Chancellor upon an order made by his honour the Master of the Rolls, relating to Mr. Conway; and what it was my Lord Chancellor said on that occasion?

Waller. In July 1723, I had directions from my client to apply to Mr. Conway, to lay out upon the South Sea annuities the sum of 4,000*l.* that had been brought before him in a cause between Mr. Devenant and my lord Cardigan. The Master told me at first, he would take care of it. Upon further application, he said, the order had directed another sum of money should be brought before him in the same cause, and that he could not put out the one without the other. Upon this, I applied by petition to the Master of the Rolls, praying, that Mr. Conway might be obliged to put out the money, and that he might answer interest for it after he had had it a reasonable time in his hands. Upon that, the Master of the Rolls directed he should lay out the money immediately.

Serj. *Probyn.* I beg your lordships pardon for interrupting this witness. In the manner he is going on, your lordships observe, he is taking notice of orders, petitions, acts of the Court, and this he gives upon his memory. We think these ought to be produced.

Sol. Gen. If they are desirous to entertain your lordships with them, we have them all here. We only make use of them to let in the declaration of the noble lord.

E. of *Macclesfield.* If that be all the use, there is no need to produce these orders: But if they are to introduce evidence with relation to the merits of the cause, it is proper to have them produced.

Sol. Gen. We don't dispute the justice of the order then made, but ask the occasion of it; and all we desire is, what was declared, and what was the occasion of the declaration.

Serj. *Pengelly.* The Managers don't enter into the consideration whether the order is just or no. All they represent to your lordships, is the occasion of this declaration. Whether a man acts justly that detains money, and does not pay it out when he ought to do it, that we leave to another determination. But what we ask now, is the declaration of the earl of Macclesfield, and the occasion of it.

Waller. Upon the petition to the Master of the Rolls, he made an order to put the money out, and that the Master should pay some interest. On this he applied to my Lord Chancellor, to discharge this order. My lord, upon that occasion, said, The Master was not to blame, and that the then Masters were a set of Masters of as great probity, ability, and fortune, as ever had been before; and that his lordship had had the satisfaction of having put in most of them himself. I cannot say, that these were the very words, but it was to this effect.

Sol. Gen. When, at what time was this?

Waller. This declaration was made the 21st of January, 1723.

Sol. Gen. Where was it?

Waller. In court, at my lord's house in Lincoln's-inn-fields, where he usually sat.

Sol. Gen. Was there at that time any vacancy of any Master's office; and how long did that vacancy happen before?

Waller. Mr. Fellowes died either the day before, or the day but one before.

Sol. Gen. Was there any observations made at that time of any person in court that took notice of what was said?

Waller. One of the counsel took notice of somebody taking notes, and said, he believed it would be in the Amsterdam gazette in a short time, or to that purpose. My Lord Chancellor asked who he was?

E. of *Macclesfield.* I desire he may tell your lordships, when application was made to me by way of complaint of it, what it was I said at that time?

Waller. I don't remember.

E. of *Macclesfield.* Pray, recollect yourself, if I did not say it was right, and they had a right to take notes there.

Waller. I don't remember that you did.

E. of *Macclesfield.* Did I make no answer?

Waller. Not as I remember.

Serj. *Probyn.* I desire he may be asked, whether he kept any notes or memorandums of the words that were then said?

Waller. No, my lords.

Serj. *Probyn.* How does he then come to remember the very words?

Waller. Since my lord Macclesfield's counsel will have it, I must acquaint your lordships, that it struck me with so much astonishment to hear such a declaration made on the Masters, which most people thought they did not deserve, that indeed I could not but remember it, and have remembered it ever since.

Serj. *Pengelly.* We have several other persons who were present at this time, when this declaration was made; but we apprehend it was so public, so notorious, and has been so distinctly proved by a person present, that it will be unnecessary to call further evidence to it.

Sol. Gen. We beg leave to trouble your lordships as to one circumstance, to ascertain the death of Mr. Fellowes: We have one of Mr. Fellowes's servants here.

Edward Ange sworn.

Sol. Gen. We desire he may be asked, whether he was a servant to Mr. Fellowes?

Ange. I was a clerk in Mr. Fellowes's office at the time of his death, and many years before.

Sol. Gen. When did he die, what day?

Ange. Upon the 19th of January, 1723.

Sol. Gen. It was the 21st that the declaration was made, so that it seems that it was necessary; and such a declaration was wanting at that time to keep up the price of the office.

Mr. *Lightboun* called.

Sol. Gen. We desire Mr. Lightboun may be asked, whether he gave any intimation to the earl of Macclesfield, that the circumstances of some of the Masters were suspicious, before the 21st of January was twelvemonth.

Mr. *Lutwyche.* I desire Mr. Lightboun would give your lordships an account what discourse he had concerning the Masters with the earl of Macclesfield.

Lightboun. I can't say I acquainted him with my suspecting any of the Masters by name being deficient; but I told him in conversation, that as a deficiency had happened in Mr. Dormer's office, the like accident might happen in others; and that it might be proper for his lordship to take some measures to prevent the like for the future, if possible.

Mr. *Lutwyche.* In the year 1723, whether had you any discourse with my Lord Chancellor relating to the circumstances of any of the Masters, or about any proposals of security to be given by them?

Lightboun. In the year 1723, I had some conversation with my lord upon that subject, and it was upon the occasion of my lord's sending for me to know why I had not complied with a proposal of the Masters, to pay 500*l.* towards making good Mr. Dormer's deficiency. I asked, whether it was his lordship's proposal, or whether it was a proposal from some of the Masters. My lord said, it was mentioned by the Masters, and he approved of it; and as the rest had complied, he hoped I would.

Sol. Gen. You need not now give a particular account of this; this will be proper on another occasion; that I desire to ask you now is, only in general, whether before the 21st of January, 1723, you had any conversation with my lord about the deficiency of the Masters, and that there was reason to suspect a deficiency in some of the Masters?

Lightboun. I did not mention any particular person, but only that an accident had lately happened, and as it had happened, it might happen again; but I was far from mentioning any Master by name; for I might thereby have made myself liable to an action.

Sol. Gen. We don't desire to ask him whether he mentioned any particular Master, but only in general whether he did not say he had grounds to suspect some of them? The question is in general.

Com. Serj. The question was first asked in general; but the answer not coming out to their satisfaction, they now apply it to a particular fact, to which the answer required is only Yea and No. This we apprehend not to be altogether so regular; we therefore desire the question may be asked in other terms.

Sol. Gen. My lords, I will ask the question in general, whether he gave any intimation in general, that there might be a suspicion of the Masters?

Lightboun. I did in general acquaint my lord, as this accident had happened, I did not know how soon it might happen again. The year 1720 had made great havock, and I did not know what effect it might have had amongst us.

Serj. *Pengelly.* I desire Mr. Lightboun may be asked, whether he can recollect that he had any discourse with my lord Macclesfield to that effect at any other time before January 1723?

Lightboun. My lords, I can't confine myself to a particular time. I have had the honour of many conversations with my lord Macclesfield on this subject, and what passed at one particular time more than another, I can't remember. I have often had the honour to hear his lordship mentioning the methods which he thought of to prevent it, and to propose such methods as I thought of; but I can't tell all the particular times.

Serj. *Pengelly.* I desire he may be asked, whether, from the conversation which passed between the earl of Macclesfield and himself, it appeared to him, that the Earl had any suspicion of a want of substance in the Masters?

Lightboun. My lord, when I mentioned it, seemed unwilling to think so. He said he hoped not; he hoped there was no manner of danger, they were all recommended to him for men of fortunes, or to that effect. Latterly, this last year, when my lord was talking of this matter, he seemed to think there was a necessity that there should be an enquiry into this affair: and when the Masters were ordered to bring in their own accounts, I remember I told my lord I questioned if they were able to do it. My lord said he hoped it, and wished it.

E. of *Abingdon.* If Mr. Lightboun be left to his own discretion, to relate without interruption whatever he can recollect that passed between him and lord Macclesfield before Jan. 1723, when this declaration was made in Court, it may give your lordships a fuller light and satisfaction.

Lightboun. I don't remember to have had any particular conversation about the abilities of the Masters, farther than I have mentioned to your lordships. I have told you that I did give some hints in a doubtful manner, that I was dissatisfied; but it would very ill have become me to have mentioned particular people whom I was doubtful of.

Serj. *Pengelly.* My lords, we proceed now to examine some witnesses upon the Article relating to the Masters coming in, and in what manner the money was paid upon their admission, either on a surrender, or death of a former Master; and out of what fund that money was paid. We beg leave to call Mr. Kynaston.

Mr. *Kynaston* called.

Serj. *Pengelly.* We beg leave he may be asked, in relation to his treaty with Mr. Rogers, when he came into his office; and in what manner the money paid for the office was raised?

Kynaston. It was in May, 1721.

Com. Serj. Before Mr. Kynaston answers to this, we hope the Managers shall intimate to your lordships, that they have evidence to apply this to the lord who now stands accused; otherwise a bare discourse between Mr. Rogers and Mr. Kynaston cannot affect the earl of Macclesfield.

Mr. Lutwyche. I apprehend this interruption is very unnecessary: It is the first part of the Article we are going to prove, that it was a practice among the Masters in Chancery, to pay the money for their places out of the suitors' money; and that though the Chancellor had good reason to suspect or know this, yet he applied no remedy or redress, but let it go on for his own benefit: Therefore we must begin with the first part of the Article. They are not to examine and ask the Managers, whether they have any proof of the latter part of the Article? We are beginning with the first part of the Article, and then shall bring it home to the noble lord.

Sol. Gen. We shall prove the whole, that there was such a practice, and that it is reasonable to think the noble lord knew it, or had reason to suspect it, and did not prevent it. We must first begin with the practice.

Serj. *Pengelly.* My lords, we desire he may give your lordships an account of the methods taken at the time he came into the office, of selling and paying for those offices, and in what manner the agreement for his office was transacted?

Kynaston. My lords, I treated with Mr. Rogers for the sale of his place in May, 1721. I did understand then, and had heard before, that the method was, that they retained so much of the money belonging to the office for their places, and that such had been the practice. I did agree with him, and entered into Articles to pay him 6,000*l.* for his place. I went for some time into the country, and when I was there, he wrote to me, and told me that he designed to resign the place on the 9th of August. I did come up to town, and on the 9th of August I gave him a bond for 6,000*l.* Then I went with him to my lord Macclesfield, and was sworn in Master. There was a general order for him to deliver over the effects and securities to me; after this he delivered up the bond which I had given him, and retained so much money belonging to the suitors of the Court as amounted to 6,000*l.* He paid me 9*l.* and delivered me up my bond, and I gave him a receipt for 6,009*l.*

Serj. *Pengelly.* I desire to know what was paid for his admission?

Kynaston. 1,500 guineas were paid to Mr. Cottingham by Mr. Baily.

Serj. *Pengelly.* How was it repaid?

Kynaston. In February afterwards, I stated an account with the person that was my cash-keeper and kept my money, in relation to the money received and paid, and he charged me with the 1,575*l.* and deducted it out of the money of the suitors which he had received.

Serj. *Pengelly.* I desire he may be asked, how much cash, what sum of money came to his hands from Mr. Rogers?

Kynaston. Something above 20,000*l.*

Serj. *Pengelly.* I desire he may be asked, Whether, when these effects were by the order of transfer delivered from Mr. Rogers to him, there was any person present on behalf of my lord Macclesfield to see them delivered over?

Kynaston. No.

Serj. *Pengelly.* Was there any account demanded of him afterwards, either by my Lord Chancellor or his agent, of the quantum of the effects or cash?

Kynaston. I don't remember there ever was.

Serj. *Pengelly.* I beg leave to ask, whether at that time he had money enough of his own to pay Mr. Rogers 6,000*l.* for his place, and 1,500 guineas to my lord Macclesfield for his admission?

Kynaston. Yes, I believe I had more money at that time, but it was out upon security; I was worth more.

Serj. *Pengelly.* What was his inducement to come into this office?

Sol. Gen. Or, I would ask it in other words, Whether the easiness of his paying for his place was not one thing that induced him to purchase?

Kynaston. Yes, I believe it was one inducement to me to purchase the place.

Sir *Wm. Strickland.* I beg leave to ask another question: Mr. Kynaston says, he had more money of his own at that time; but I desire to know whether he could have paid 7,575*l.* which he gave for his office, unless he had paid it out of the suitors' money?

Kynaston. No, I could not have paid the whole.

Serj. *Probyn.* If the gentlemen have done, I desire he may be asked, what money he had of his own at that time, either in cash, or in his banker's hands, or in security?

Kynaston. I really cannot tell, I believe I might have between 2 and 3,000*l.*

Serj. *Probyn.* How much can you take upon you to say you had?

Kynaston. Really I cannot tell.

Serj. *Probyn.* Speak to the nearest you can.

Kynaston. I believe I had about 2,000*l.* very near three, in money and effects.

Serj. *Probyn.* What other estate had you? Had you any real estate?

Kynaston. I had an estate settled upon me at my marriage; no other estate.

Serj. *Probyn.* I desire you to give an account, whether you had any other personal estate?

Kynaston. No, I do not remember I had, except you reckon timber such.

Com. Serj. I desire, my lords, he may be asked, what the annual value of his real estate was?

Serj. *Pengelly.* I submit, whether he be obliged to tell his whole circumstances?

Kynaston. I am very willing to tell, it was about 400*l.* a year.

Com. Serj. Whether he had not his estate without impeachment of waste?

Kynaston. Yes.

Serj. *Probyn.* Of what value might the timber be?

Kynaston. I was once bid 2,500*l.* for it, but now they know I have an occasion to sell, they will not give me so much.

Serj. *Pengelly.* I beg leave he may be asked, whether at that time his father was living?

Kynaston. Yes, he was at the time of my purchasing the place.

Serj. *Pengelly.* As the cash was above 20,000*l.* of what value were the securities?

Kynaston. Really I cannot tell, I have given in an account of the effects.

Serj. *Pengelly.* About what sum?

Kynaston. I have given it in my accounts what it was.

Serj. *Pengelly.* To what sum doth the whole both in cash and securities amount?

Kynaston. I believe under 50,000*l.* about 46,000*l.*

Serj. *Pengelly.* The securities as well as the cash?

Kynaston. I mean the securities and the cash together.

Serj. *Pengelly.* Upon this evidence, we submit it to your lordships, Whether the timber upon his estate was a proper security for 50,000*l.* to be put into his hands.

E. of *Macclesfield.* He now represents his estate to be 400*l.* a year. How was it reputed?

Kynaston. I believe about 500*l.* per annum.

Mr. *Plummer.* I desire to ask him, Whether if he had felled every stick of timber on his estate, that and his personal estate would have paid what he was to give for his Master's place?

Kynaston. No, it would not.

Serj. *Pengelly.* My lords, we make use of this as a proof of the former Article.

Mr. *Thomas Bennet* called.

Serj. *Pengelly.* My lords, we desire he may be asked in what manner the transfer of his office was transacted, and how the money was paid for his Master's place?

Tho. Bennet. My lords, when I treated with Mr. Hiccocks about the surrender of his office, one of the first things he told me was, that I need raise no money to come into this office, for whatever money we agreed for, should be deducted out of the money to be paid over to me, which I understood to be the money belonging to the suitors of the Court.

Serj. *Pengelly.* What was done in pursuance of this?

Tho. Bennet. This encouraged me to go on and proceed, in order to come into this office; I supposed this to be the practice, else I had not gone in.

Serj. *Pengelly.* Whether was that generally reputed to be the practice?

Tho. Bennet. I own I thought so. I was a younger brother, and had not money enough of my own to come into that office.

Serj. *Pengelly.* We beg leave that he may inform your lordships how much he was to pay, and how it was raised and paid?

Tho. Bennet. The sum I agreed to pay Mr. Hiccocks was 1,500*l.* and the sum to my Lord Chancellor was 1,500 guineas, which is 3,075*l.*

Serj. *Pengelly.* We hope that he shall inform your lordships how it was raised and paid.

Tho. Bennet. As to the 1,500 guineas, I acquainted your lordships I borrowed it of my brother, and the next day returned it him again out of the money I received of Mr. Hiccocks. As soon as I was admitted, I went to Mr. Hiccocks, and demanded of him the suitors' effects. He paid me 1,500*l.* and told me I must give a receipt for 9,000*l.* I told him, it was hard to have no more money paid me, when he told me there was much more cash in the office, and that I had given my lord Macclesfield more than he had offered to pay me: he said he should pay me more afterwards, but he insisted on my taking this now, so I took the 1,500*l.* and gave him a receipt for 9,000*l.*

Serj. *Pengelly.* I desire he may be asked, whether upon any occasion he had any discourse with the earl of Macclesfield relating to the method of his coming in, or about the repayment of the 1,500 guineas he paid him?

Tho. Bennet. In order to give an account of this, I must acquaint your lordships of the occasion of my waiting on his lordship. Mr. Holford told me that my Lord Chancellor had sent to him, and desired that he and my brother, John Bennet, would endeavour to accommodate matters between Mr. Hiccocks and myself, on occasion of the deficiency of my accounts. Mr. Holford said he did not care to go; but my brother did go to Mr. Hiccocks. He would do nothing, no accommodation could be made; but my brother told me that my Lord Chancellor would pay back to me the 1,500 guineas which he had received, so the matter with Mr. Hiccocks might be accommodated.

Serj. *Pengelly.* When was this?

Tho. Bennet. It was about the time of our giving in our accompts.

Serj. *Pengelly.* Was it before Christmas, or after?

Tho. Bennet. It was before Christmas last, in December; I think about the 7th of December. Upon that I asked my brother, whether I might depend upon it, that my Lord Chancellor would pay back the 1,500 guineas? And he said, Yes, he had it from his lordship; and he did assure me I might depend upon it; but he said nothing could be done with Mr. Hiccocks. Then I desired them to acquaint my lord with it; they both declined it, and desired I would go myself upon this occasion. I went, and I told my lord, I was come to wait upon his lordship to thank him for the kind offer he had made to my brother, of returning the 1,500 guineas, and I wished the same could be said of Mr. Hiccocks, and I could prevail with him; but nothing could be done: I came to return his lordship thanks; and I thought I should have received the money then. My lord asked me to sit down, and then told me if he had known I had been to give so great a sum of money for the office, he would not have admitted me. I told him I did give so great a sum, but immediately, as soon as I was admitted, I ensured my life to the value of 8,000*l.* which cost me 400*l.* so that if I had died, no harm would have come to the suitors. My lord said, it was very honourably done. Soon after that he said, he was very sorry to see the items that were put into my accompt and Mr. Kynaston's, in relation to sums in the hands of an honourable person: for, says he, that hath discovered the method of purchasing these offices, that the money is deducted out of the suitors' money, which, said he, I have always taken pains to deny, whenever I have been asked the question.

Serj. *Pengelly.* We beg leave now to ask him, how much the whole of the cash, and securities transferred from Mr. Hiccocks to him, amounted to?

Tho. Bennet. I believe near 100,000*l.*

Serj. *Pengelly.* I apprehend he said before, he was a younger brother, and had but little fortune of his own; I desire he may be asked, whether any care was taken by my lord Macclesfield as to the transferring the effects of the suitors in Mr. Hiccocks's hands over to him? and whether any person was employed by my lord to see the effects transferred over?

Tho. Bennet. No.

Serj. *Pengelly.* Whether there was any other security for this great sum of money deposited in his hands, besides what was made by this insurance on his life?

Tho. Bennet. No, my lords, I know of no other security. That was a voluntary act of my own, and I paid for it.

Mr. *Lutwyche.* My lords, Mr. Bennet says he had some reason to hope that the 1,500 guineas would be given him back again; I desire he may be asked, whether there was any subsequent overture about paying the 1,500 guineas back again?

Tho. Bennet. My Lord Chancellor dismissed me at that time, and told me, I should not know by what means, or by what methods I should receive the money, or by whose hands; but his lordship would take care that one way or other I should receive it: he would not say how, because I might be called upon to answer what discourse passed between his lordship and me in another place.

Mr. *Lutwyche.* Was there any thing done upon that?

Tho. Bennet. Hearing nothing from my Lord Chancellor for a fortnight after, I went to his secretary, Mr. Dixon, and told him that I had used such expressions in my accompt, that if the money was not produced, it would oblige me to name my Lord Chancellor; and I desired him to acquaint my lord that I could not pay this money, and that I must discover it in a day or two. This was Sunday night: the same night Mr. Dixon returned from my lord, and told me, that if Mr. Holford would be present the next morning at the payment of the money at Mr. Kynaston's chambers, that Mr. Kynaston and myself should receive it. We were there the next day. Mr. Dixon came, but brought no money; said my lord expected some indemnification. We said, as to an indemnification we could give none. He said he would go to my lord. I was in hopes he would have brought the money; but when he came back, he said it was an holiday, and no money could be had, and desired we would go to the judges, and desire two or three days time to produce this money. I told him we could not do it, for that very night the report was to be laid before the king and council. He then returned again to my Lord Chancellor, as he told us, and when he came back, he said my Lord Chancellor was gone out. Upon that we gave in my Lord Chancellor's name to the judges, and the gentlemen of the Bank, and they gave it in to the council, as I am informed.

Mr. *Lutwyche.* My lords, we desire he may answer this question, whether it was explained what that indemnification was, which was expected, and in what manner it was to be?

Tho. Bennet. My lords, Mr. Dixon explained it thus——

E. of *Macclesfield.* I hope whatever Mr. Dixon said, shall not affect me; but that they will produce him: he is able to speak for himself.

Mr. *Lutwyche.* Then I only desire he may be asked, what officer Mr. Dixon was under my Lord Chancellor?

Tho. Bennet. Mr. Dixon was my lord's secretary.

Mr. *Lutwyche.* Whether at that time that you had the discourse with my lord Macclesfield, you mentioned or said any thing of Mr. Dixon's having come to you in my lord Macclesfield's name?

Tho. Bennet. No, my lords, that was before Mr. Dixon's coming to me.

Mr. *Lutwyche.* Did you take notice at any time to my lord Macclesfield of Mr. Dixon's coming to you?

Tho. Bennet. No, I never spoke to my Lord Chancellor afterwards. This was the 27th of December, and it was the 7th of December, that I waited upon my lord.

Serj. *Peugelly.* We think it appears that Mr. Dixon was an agent of my lord Macclesfield's: I desire to know what the nature of the proposal of indemnification was, that he made?

E. of *Macclesfield.* I can't think Mr. Serjeant is in earnest. Have they proved that he was employed by me? I have heard no proof of it, only Mr. Serjeant hath said it. Mr. Dixon himself is the proper person to give an account of what he told them from me. If they do insist upon it, I must beg your lordships' judgment.

Serj. *Pengelly.* If it is insisted upon by the noble lord, to disavow the proceedings of his own agent, we will wave it.

E. of *Macclesfield.* I neither avow nor disavow, but I object to the evidence of this gentleman about the discourse of what Mr. Dixon said, who is living and can speak for himself.

Serj. *Pengelly.* If the noble lord will ask him any thing, he may; we have done.

E. of *Macclesfield.* I beg leave that Mr. Bennet may be asked two or three questions: He has indeed given evidence which greatly surprizes me. In the first place, I desire he may inform your lordships, whether, when he was with me, he did not tell me, that if Mr. Hiccocks would pay 2,000*l.* he would make good the whole money?

Tho. Bennet. No, I did not say so; I could not make good the whole money, or any thing like it. I said that such a report had been spread, that I proposed that if Mr. Hiccocks would pay me 2,000*l.* I would answer the rest; but I was not able.

E. of *Macclesfield.* I would be glad to know how he came to tell me of a report of his own act: Was it a report without any foundation?

Tho. Bennet. I went to Mr. Hiccocks, and told him I wanted 6,000*l.* but he said if 2,000*l.* would do, he believed he could lend me that. Lend it me, said I! If you give me 2,000*l.* it is something. And this was the foundation of this report.

E. of *Macclesfield.* I cannot give evidence myself to disprove him in this; and therefore I desire to know whether he has said to any other persons, that if Mr. Hiccocks would pay him 2,000, or 3,000*l.* or thereabouts, he would pay the rest?

Tho. Bennet. I might say I would endeavour to raise the rest: but I never said I would pay the whole, for I knew I was not able.

E. of *Macclesfield.* Mr. Bennet understands my question, to which he hath given no answer. My question is, whether he hath not told some other people, that in case Mr. Hiccocks would pay 2 or 3,000*l.* he would pay all the rest?

Tho. Bennet. No, my lords, I never told any body that I would pay the rest; but I believe I might say, if Mr. Hiccocks would give me 2 or 3,000*l.* I would stand the hazard; for I did not expect that all the money should be taken out of my hand.

E. of *Macclesfield.* I desire he may be asked, whether at that time he was with me, I did not ask him, with what conscience and honesty he could buy a place, when he had not money to pay for it? or whether it was not in answer to that, that he told me that he had insured his life?

Tho. Bennet. My lord did say so to me. I answered I had not money; that I had not bought the place, had it not been for the cash of the suitors; and that I had since insured 8,000*l.* on my life, in order to secure the suitors.

E. of *Macclesfield.* I desire to know what visible estate the gentleman then had, and of what yearly value?

Tho. Bennet. My lords, when I came into the office, I believe I had about 250*l.* a year, or thereabouts.

E. of *Macclesfield.* I desire to know, whether he was married before?—*Tho. Bennet.* I was.

E. of *Macclesfield.* What fortune had you with your wife?

Tho. Bennet. The fortune I had with my wife, was in the whole between 2 and 3,000*l.* part of it was an house.

E. of *Macclesfield.* What was the value of that house?

Tho. Bennet. I had not let it then; but since my coming into the office I have let it for 90*l.* a year.

E. of *Macclesfield.* I desire to know if he did not keep his coach and equipage at that time?

Tho. Bennet. I did set up my coach in the unfortunate year 1720. I was once worth 20,000*l.* but lost it all, and became much indebted; the estate I had of my own was mortgaged for more than it was worth.

E. of *Macclesfield.* Whether he was married in the year, 1720?

Tho. Bennet. No, I was not.

E. of *Macclesfield.* I desire to know what estate he hath given into the Court of Chancery?

Tho. Bennet. That account lies upon the table.

E. of *Macclesfield.* What yearly value is that?

Tho. Bennet. About 900*l.* per annum; part of it is settled, the rest mortgaged, and an annuity charged on it more than it is worth.

E. of *Macclesfield.* Has any estate been purchased with your money, or money which came from you since you was a Master?

Tho. Bennet. Part of that given in was so, 68*l.* per annum, and 40*l.* per annum.

E. of *Macclesfield.* Has any other estate been purchased with your money, or money which came from you, since you was a Master?

Tho. Bennet. None, but what I have given in. I have given in every shilling.

Com. Serj. My lords, I desire he may be asked, whether he was not, at the time of his becoming Master in Chancery, in possession of the office of Clerk of the Custodies?

Tho. Bennet. Yes, I was.

Com. Serj. Now, my lords, it will be very proper to ask him what that was sold for, that the value of his estate may be known.

Tho. Bennet. That may affect me and my successor.

Mr. *Lutwyche.* I don't know whether we need put you in mind, that the late act of parliament only indemnifies the Masters, but there is none to indemnify the Clerk of the Custodies.

Com. Serj. Which way it will affect Mr. Bennet I don't know. I apprehend no action can lie against him for the money he received, nor any criminal prosecution or information. But that I may not mis-spend your lordships time, I desire Mr. Bennet may inform your lordships of the yearly value of the place.

Tho. Bennet. It is about 250*l.* a year.

E. of *Macclesfield.* A patent for life?

Tho. Bennet. Yes, my lords.

Serj. *Probyn.* How much hath it been sold for?

Tho. Bennet. I can't tell what it hath been sold for: It may have been once sold for about 1,200*l.*

Serj. *Probyn.* At that time when you surrendered, what might it have been sold for?

Tho. Bennet. I beg leave to submit, whether I am obliged to answer that question?

Serj. *Pengelly.* If it was not saleable by law, it was not worth a farthing. I beg leave to put your lordships in mind, that Mr. Bennet was excused yesterday from answering a question of the same nature: The counsel hope that this day, being a new day, they may have liberty to ask the same question over again.

Com. Serj. There was another ingredient in your lordships' resolution yesterday. I hope it is no injury to him to answer how much he hath known it to be sold for; without mentioning by whom.

Serj. *Probyn.* We hope Mr. Bennet will answer the question, what is the most he hath known it to be sold for?

Mr. *Plummer.* My lords, I object to his answering that question, because if he did sell it himself, that might be the greatest sum that he hath known to be given for it, and that will subject him to a penalty.

Serj. *Probyn.* We don't ask who gave it, or who received it: but what is the greatest price he hath known that office to be sold for?

E. of *Macclesfield.* He says he hath known it to be sold for 1,200*l.* I desire he may be asked, whether he hath known that it hath been sold for more?

Tho. Bennet. I believe it hath been sold for more.

E. of *Macclesfield.* And how much more?

Mr. *West.* This question is an indirect way to come at that question that was denied them yesterday.

Sir *Wm. Strickland.* My lords, with humble submission, the question asked by the noble lord, tends directly to make Mr. Bennet tell what he sold his own office for; for if his own office was sold, it is probable that he sold it for the greatest price; and to tell that, is to make him say what he sold his own office for.

Mr. *Lutwyche.* By this method your lordships' resolution of yesterday will be evaded. We took it then, that the witness was not obliged to discover what he sold the office for. Now they are asking what is the greatest price he knew the office sold for? Then the next question may be, to whom was the office sold, and by whom was it sold? Therefore we must humbly submit it to your lordships, that it is not a question to be asked.

Com. Serj. To object to a question because another may follow, is odd arguing. When such a question is made, it will be then time enough to oppose it: therefore I hope that we shall go on.

Serj. *Probyn.* My lords, I apprehend this question is proper, and the answer to it is necessary.

Lord *Lechmere.* Your lordships will observe some rules in your proceedings. An objection hath been made: an answer hath been given: both sides insist upon your lordship's judgment: that being done, they must withdraw. Therefore I desire they may withdraw.

E. of *Macclesfield.* The reply is not yet made; something has been said by the gentlemen who are Managers by way of objection to the question that was proposed, which, if they insist upon, I desire my counsel who are to reply, may be heard before they withdraw.

Serj. *Probyn.* The Managers for the House of Commons have been pleased to examine into the circumstances of Mr. Bennet, at the time he was admitted Master, in order to shew that he was then not of substance fit to be entrusted with so great a sum of money. We are then in duty obliged to examine him as to that substance, and the value of his effects. He hath told your lordships what estate he hath in land; we are now to examine him as to his personal estate: he hath told us he had an office, the Clerk of the Custodies; that he hath parted with it; the money arising by that office must be reckoned as part of his personal estate. To come at the value of the office, we do not ask him any question that makes him liable to a penalty; but such a question, where the answer to it may be given with safety; and that is, what is the greatest sum he hath known to have been given for the office of the Clerk of the Custodies? He may answer this without involving himself in any difficulties, for it is not asked what he himself hath sold that office for? No answer to this general question can affect him with any ill consequence.

Dr. *Sayer.* I humbly apprehend this is no way irregular. We are enquiring about his effects; it is owned he had the office of Clerk of the Custodies, therefore that must be a part of his personal estate: the answer to our question can't any way involve him in danger, or subject him to any penalty; because it doth not necessarily follow that he sold his place at the greatest price that he ever knew it sold for. We submit it, whether it is not a question fair with regard to the witness, and proper to be put to him.

Mr. *Robins.* We agree that where he may subject himself to a loss, there is no forcing him to answer; no person is bound to accuse himself. But this is only a matter of discovery what the value of this office is; the answer cannot affect him; and therefore we hope we shall have an answer.

Mr. *Strange.* My lords, I am surprized to hear it said that this is not a question material for the noble Earl's defence: surely it is as material for us to increase his estate, as it is for them to diminish it. They have already examined into particulars, to shew what small substance he was of, and what the estate he had was mortgaged for: the proper answer to be given to that, as far as it will go, will be to shew that he had other estate and effects, and we are not able to shew that without examining him. I humbly submit it therefore that we are as proper to go into that evidence as they were; it is equally material; and as they have examined to it on behalf of the Commons, we are entitled to examine to it likewise on behalf of the noble Earl.

E. of *Macclesfield.* I apprehend the objection is, that he is not to be asked a question, which if he answers he will charge himself with a crime or penalty. Whatever answer he makes to this question cannot charge him: let him answer and say that he hath known this place sold for 1,000, 1,500, or 2,000*l.* can that be given in evidence so as to affect him? Therefore the question to-day is not the same as was asked yesterday: it was then asked, what he had received for his place? and if he had answered and said what he had received, it would have been a confession, which would have convicted him: but if the answer be, that he knows it was sold for such a price, and that is given in evidence, by that answer it doth not appear that he sold it: therefore upon that I humbly submit to your lordships, and we are ready to withdraw.

Serj. *Pengelly.* This is by a side-wind to know your lordships' opinion upon the Ninth Article.

E. of *Macclesfield.* I beg leave to interrupt that worthy gentleman. I agree that the Commons that bring in the Charge, have a right to reply; but, with submission, this is an objection arising from my counsel, and the reply belongs to them.

Serj. *Pengelly.* My lords, we apprehend the objection arises from the Managers, and therefore the reply belongs to them. The Managers made the objection, therefore we beg leave to observe, that this is in consequence to desire your lordships' judgment upon the Ninth Article, whether the office of the Clerk of the Custodies be saleable by law, or no? If he is obliged to answer this question, it is upon a supposition that the transaction is lawful: therefore, in an affair of this nature, there can be no other view but to get an opinion upon this Article. My lords, we apprehend this proceeding is in consequence the same as if a question was proposed to your lordships, whether my lord Macclesfield could by law sell the place of Clerk of the Custodies?

Mr. *Lutwyche.* My lords, I must beg leave to mention this to your lordships. When it is considered upon what foundation this question is asked, and what it doth mean, it can be only to elude your lordships' resolution yesterday, and to make that of no effect. My lords, there should be always the greatest candour used before your lordships, that no tricks or methods

should be made use of to ask that which should not be asked. Now, my lords, what is the question they are examining to, and the use to be made of it? Here is a person that is alleged to be of mean ability, and the question is, what substance and estate he hath? And they would reckon into part of his estate an office not saleable by law, and ask him, what that office is worth? From whence the inference must be, that he sold it.

E. of *Macclesfield.* That is not the question, what it is worth? But a particular fact, what is the most that it hath been sold for?

Mr. *Lutwyche.* What doth that tend to? The question is, what estate this gentleman had that could enable him to pay this money for this office? They have examined him about his own estate, and his wife's estate, but then there is another part of his estate; which was this office of Clerk of the Custodies. What is that? It is that very thing which we say it is unlawful to sell: therefore we submit it to your lordships as no way material to the defence of the Earl. We hope your lordships will not admit that to be done by an indirect method, which would not be admitted to be done by a direct one.

[Ordered to withdraw; which was accordingly done; and all parties concerned being after some time called in again]

The Lord Chief Justice *King* declared to them, That it was the order and judgment of the Lords, that the said question was not to be asked.

Mr. *Plummer.* I would ask Mr. Tho. Bennet one question, whether every thing he had in the world at the time of his purchase of the Mastership, was worth the money he gave for it?

Tho. Bennet. All I had in the world was not worth it.

Serj. *Probyn.* My lords, Mr. Bennet says he mortgaged his estate for more than it was worth; I desire he may be asked, whether he knew at that time, that it was not worth so much as it was mortgaged for?

Lords. No, no.

Mr. *Plummer.* My lords, I beg leave to ask this question, and I hope it will be very proper, that is, I desire to ask Mr. Bennet, as he hath given an account of a conversation with my lord Macclesfield; I desire to know if my lord Macclesfield, at the time of his admission into his office, did ask him what he was worth?

Tho. Bennet. My lord Macclesfield never asked me any questions in relation to my circumstances, or any thing like it.

E. of *Macclesfield.* My lords, I desire he may be asked, whether I had any notice of his losses by the South Sea?

Tho. Bennet. Not that I know of: I don't know that my Lord Chancellor had any notice of it.

Serj. *Pengelly.* My lords, if the counsel have done, we shall not give your lordships any farther trouble on these two Articles: both of them are as clearly and as fully proved and substantiated as it is possible. It comes out now, upon the examination, that though several Masters were entrusted with 40, 50, or 80,000*l.* they were not of any competent substance, not really worth what they paid for their particular places. As to the manner of their paying for their places, if we have not given a direct evidence that his lordship knew it, yet the practice and notoriety of the fact being proved, and that it was thus generally understood, is a reasonable evidence in itself, and by the notice the Earl took of it himself by the several questions he hath asked, we think it is yet clearer. We humbly submit, whether upon this evidence every part of these two Articles is not sufficiently proved? We depend upon the examination already taken, and will take up your lordships' time no farther.

[Then the Managers and the counsel were directed to withdraw, and the Lords adjourned to the next morning at ten o'clock in the forenoon.]

The Third Day.

Saturday, May 8th.

The Lords being seated in their House, proclamation was made by the serjeant at arms for silence; and another proclamation, That all persons concerned were to take notice, that Thomas earl of Macclesfield now stood upon his trial, and they might come forth in order to make good the Charge.

L. C. J. *King.* Gentlemen of the House of Commons, you may proceed in your evidence.

Mr. *Gybbon.* My lords, your lordships having already heard what has been offered in support of the preceding Articles, I am commanded by the Commons to assist in maintaining the 13th and 14th Articles of their Impeachment against the earl of Macclesfield.

The Charge in these Articles is, That the Earl knowing Mr. Dormer (one of the Masters in Chancery) had disposed of great part of the suitors' money for his own private advantage, by which there became, and still continues, a deficiency of at least 25,000*l.* and that Mr. Dormer absconded upon that occasion; that application was made to the Earl thereupon, who instead of taking proper methods to compel Mr. Dormer to make satisfaction to the suitors, (from an apprehension that a public discovery of the said deficiency might lessen the unjust gain the Earl proposed to himself, by selling and disposing of the said offices) did endeavour, by many indirect practices, to conceal from the suitors of the Court, the true state and condition of the said office, and did falsely and deceitfully declare that Mr. Dormer was only gone to take the air; that he would return in a little time, and all would be well. That Mr. Dormer having, towards a satisfaction to the suitors of the Court, assigned to Mr. Edwards (who succeeded him in his office of Master) a debt of 24,046*l.* 4*s.* due from Mr.

Wilson (a banker) to Mr. Dormer, to the intent the money received on that account should be applied as the Court of Chancery should direct, the earl of Macclesfield, for the unlawful purposes aforesaid, without regard to the interest of the said suitors, by colour of his said office, did in an unwarrantable, clandestine, and unusual manner, authorize, direct and establish a precarious and trifling composition with the said Wilson, upon his paying 1,463*l.* 2*s.* 1*d.* and assigning 10,000*l.* part of a debt of 22,060*l.* 12*s.* 5*d.* pretended to be due to the said Wilson from Edward Poulter, in discharge of the said debt; and to that end, on Mr. Hiccocks's report, then one of the Masters of the said Court, without any attendance ordered or had thereupon, and without notice to the said suitors, did by a private order, not made in open Court, order Mr. Edwards to accept the said composition in full discharge of the said debt; which said Poulter was a person insolvent, and has since absconded for debt, and none, or very small part of the said 10,000*l.* has been, or is ever likely to be received.

Your lordships will please to observe, that the Earl is charged with the highest breach of trust in relation to the suitors of the Court of Chancery, and to have committed that breach of trust for the most unjustifiable end.

The crimes, my lords, stated in these Articles, are in themselves so heinous they need no aggravation; and I think the noble lord's Answer shews they are capable of no excuse.

He is pleased to say, "That Mr. Dormer being out of reach, his effects unknown, except the stock, which could not be transferred without his concurrence, and the Earl seeing no other way open to get any thing for the suitors, and being made believe, if a deficiency should happen, the same should be made up by other Masters; did agree, that in case Mr. Dormer would come over, and make a full discovery of all his effects, and assign the same for the benefit of the suitors, the said Earl would allow him his liberty on that condition, and not otherwise."

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What the Earl means by being made to believe the deficiency should be made up, I am at a loss, my lords, to know. Made believe! how, or by whom? It does not appear the Masters entered into any contract to do it; and could his lordship think any discourse between him and the Masters (if such there was) could be sufficient security for the suitors of the Court?

But suppose the Masters had contracted to supply the deficiency, I submit to your lordships how far that contract would have been justifiable; for how should that supply arise? If out of the suitors' money in the Masters' hands, that was only supplying one deficiency by making another; and if it was to be out of their own estates, that likewise, by lessening the substance of the Masters, would diminish the security of their own suitors; and what, my lords, could induce the Masters to enter into such a contract? I can imagine nothing but to conceal the deficiency, in order to raise a value on their own places upon their resignations. I therefore submit to your lordships, whether the Earl's answer is not an implied confession of an endeavour to conceal this deficiency, in order to keep up the price of the office? Your lordships observe on what condition the Earl says he permitted Mr. Dormer to come over. But I do not find the noble lord alleges, that in order to gain the end proposed, Mr. Dormer was examined on interrogatories touching the debts due to the suitors of the Court, or to what estate or effects he had to answer the same: we can shew your lordships there was no such examination. We shall prove, that Mr. Dormer did not give a satisfactory account of his balance, and with great difficulty was prevailed on to convey his estate for the benefit of the suitors: but yet, my lords, he continued to have his liberty. How the Earl will account for those proceedings, I leave to your lordships' consideration: I can see no possible account can be given but this, that an examination on interrogatories touching the debts of the suitors, and Mr. Dormer's answer and confinement, must have published the deficiency of the office. The Earl is pleased to say, "He did not doubt but the whole debt upon the said Fleetwood Dormer would be paid."

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apprehensive that the same might have happened to them; for every one knew how freely those gentlemen trafficked in the fatal year 1720. The very notion of a deficiency would have put the suitors on an enquiry, and upon calling the money out of the Masters' hands. Could then the Earl expect they would interest themselves much in an examination of this kind? But was it less his duty to enquire and give all necessary orders, and take all proper precautions for the suitors' safety, because the Masters neglected it? No, certainly, unless for the reason assigned in the Article.

The Earl says, "He did never endeavour to conceal the true state and condition of the office from the suitors, nor did any of them, until very lately, apply to him to look into the same."

He well knew, that many of them called for their money, and were ordered their whole demands, while Mr. Edwards had wherewithal to pay; but those unhappy suitors, who did not know of the deficiency, and, from such orders for the whole money, might well be persuaded there was no deficiency, and consequently did not complain, have now, I fear, a melancholy case. And with what grace the Earl can insist, that no suitors ever did, or at least till very lately, complain, I leave to your lordships' consideration.

The Earl is pleased to say, "He remembers nothing of his using the expression charged in the Article, either before or after he knew of Mr. Dormer's absconding."

I believe the noble lord, on a little recollection, will easier call to mind what he said on this occasion, than be able to give a justifiable reason for it.

He is pleased to say in his Answer to the 14th Article, "He quitted all the advantage of the disposal of Mr. Dormer's office."

The gentlemen who have spoke before me have, I hope, sufficiently made it appear to your lordships, that there could be no such legal or just advantage. Where then is the generosity? A sum of money, which he ought not to have taken, is given up towards answering the debt of the Court, for which I take it his lordship himself is answerable.

He is pleased to say, "That after Mr. Dormer's assigning Mr. Wilson's debt to Mr. Edwards, the Earl believes Mr. Edwards used great endeavours to obtain payment and satisfaction of the said debt from Mr. Wilson; but finding all endeavours fruitless, and that Mr. Wilson had stopped payment, and was in no condition of paying his creditors the whole of their debts, but had offered to come to a composition, and to pay them in proportion the utmost he was able, Mr. Edwards thereupon petitioned his lordship."

What those great endeavours were, I am, my lords, at a loss to know; for I cannot find there was any commission of bankruptcy taken out against Wilson, (though that was advised and pressed as a safe and necessary method,) no suit in the Court of Chancery, or in any other court commenced against him, to get in this debt, or that he was so much as served with any process about it. How then the Earl can say, that all endeavours were found fruitless, I leave to your lordships' consideration.

He is pleased to say, "Mr. Hiccocks reported, it was his opinion the accepting the said composition would be for the benefit of the persons entitled to receive the same."

My lords, it does not appear Mr. Hiccocks had looked much into Wilson's circumstances, had examined the particulars of his books on oath, had called the creditors before him to enquire into the justice of their debts, or to know the amount; but yet took upon him to apportion part of Poulter's debt, as a composition for the suitors of the Court; though it will appear that Wilson paid several of his creditors afterwards their full demands.

Strange proceeding, sure, in an affair of this nature! for which I will not pretend to account. But, my lords, I cannot but observe that the two Masters, who were employed to take care, on this important occasion, for the innocent, unhappy suitors, were very soon (pending the affair) allowed to sell their places at exorbitant prices. Mr. Rogers, August 1721, for 6,000*l.* and Mr. Hiccocks, June 1723, for 7,500*l.* and which very sums now remain a debt to the suitors of the respective offices. Your lordships have already heard what was demanded and paid on those resignations.

The Earl is pleased to say, "That on Mr. Edwards's second petition, with Mr. Hiccocks's report annexed, (in which Mr. Edwards expressly prayed, that he might be ordered to accept the said composition) the Earl in a proper and usual manner ordered the same as prayed, and was informed, and believes, that the said composition was made and agreed to on a consultation of all or most of the Masters of the said Court."

I have heard, my lords, the proper and usual manner is to have petitions of this nature set down to be heard in public, and the parties concerned to be summoned; petitions relating to bankrupts, to lunatics, to ideots, I believe are so: the statute in the case of bankrupts directs public notice to be given in the Gazette, for the creditors to meet; they have an opportunity there to make all proper enquiries, and see every thing done that may be most for their advantage; the bankrupt is not entitled to his liberty, nor any benefit allowed him, without a certificate that he has made a full discovery of his effects, and that there appears no reason to doubt of the truth of such discovery; and not then neither, unless four parts in five in number and value of his creditors sign such certificate, and testify their consent. How the Earl could think it just that the suitors of the Court of Chancery (whose money was forced from them by the power of that Court, and put into the hands of a bankrupt Master) should have less care taken of them, less privileges allowed them for their security, than any other creditors in the kingdom, I can no way comprehend,

but must think, my lords, this clandestine and unusual proceeding a strong proof of the crime charged in these Articles.

As to what the Earl says of the composition being agreed to by most of the Masters; if that, my lords, had been so (though we shall give evidence to the contrary,) I should not at all have wondered at it; for any composition obstructed the enquiry and proceedings, which otherwise must necessarily have been public: but, my lords, had the composition been agreed to on a consultation of all or most of the suitors concerned, that indeed would have been a good defence of the noble lord.

He is pleased to say, at the time of Wilson's assignment of Poulter's debt, that Poulter was looked on to be a substantial person.

We shall produce to your lordships evidence to the contrary: and I must observe that the Earl does not offer to shew any proper enquiry was made touching his solvency. Sure, my lords, when that debt was taken as a payment for the suitors of the Court, his circumstances should have been carefully looked to, and a recognizance with securities taken in Court; but that could not be done without a public notice of the deficiency.

When I consider, my lords, the long experience and great abilities of the noble Earl, I can never think the remissness in this enquiry, these clandestine and unusual proceedings, this precarious and trifling composition, could have happened through inadvertency only: I therefore, my lords, must insist upon it as a manifest proof of the charge contained in these Articles.

The gentleman who speaks after me on this occasion, will open the evidence we shall offer, and I will therefore take up no more of your lordships' time.

Mr. *Hedges*. My lords, it falls to my share to endeavour to be assistant to the gentleman who spoke last, in maintaining the 13th and 14th Articles; which I shall do by stating the evidence to your lordships as shortly as I can.

My lords, the 13th Article sets forth, that Mr. Dormer having embezzled great part of the suitors' effects, to the amount of 25,000*l.* or some other great sum, and he thereupon absconding, application was made to the earl of Macclesfield, then Lord Chancellor, to secure his person and effects, which his lordship neglected and declined to do; and endeavoured to conceal the true state of the office, as well with respect to Mr. Dormer's effects, as to the debt due from him to the suitors. And upon motion made in the Court of Chancery (after his lordship knew that Mr. Dormer had absconded) that the effects of some of the suitors might be transferred to a more secure office, his lordship, in order to delude the suitors into a belief of the safety of their effects, and to prevent a public enquiry, then sitting in open Court, did say, That the parties need not be in haste; falsely and deceitfully at the same time declaring, that Mr. Dormer was only gone to take the air in the country, and that he would return in a little time, and all would be well, or to that effect. And, my lords, notwithstanding the Earl's endeavour in his Answer to evade the Charge contained in this Article, I am persuaded, upon hearing the evidence, your lordships will rest satisfied, that it has been made out in every particular. For, my lords, as to the first part of the Charge, where he denies that he was ever advised to secure Mr. Dormer's person, it will be made appear to your lordships, that Mr. John Bennet, and Mr. Lightboun, went from a meeting of several of the Masters, and in their names acquainted the Lord Chancellor, that it was their opinion, that Mr. Dormer had not fairly stated his accounts; that there was a deficiency of upwards of 20,000*l.* and that it was necessary, for example's sake, he should be committed, according to the precedent set him by the lord Cowper in Dr. Edisbury's case. But the Earl insisting on Mr. Dormer's liberty, they again repeated the necessity of making such an example, but at last left the Earl fixed in his resolution of continuing Mr. Dormer at liberty.

My lords, this promise of freedom to Mr. Dormer was only conditional; if he gave in a fair and just account, and assisted in getting the debts. But he was so far from complying with these conditions; that when he gave an account in writing of the balance of his cash, amounting to 49,000*l.* he only informed them, that 24,000*l.* of it was due from one Wilson, a banker, since broke; but as to the remainder, the Master to whom it was given, could never obtain from him any other notice where it lay, or what was become of it.

Immediately upon this, the Masters were summoned, and acquainted with it; and the next morning that account was left with Mr. Cottingham for the Lord Chancellor's perusal.

Your lordships will be further informed, that Mr. Rogers and Mr. Hiccocks, being directed by the Lord Chancellor to procure a conveyance of Mr. Dormer's estate to them, for the benefit of the suitors, it was with the greatest difficulty that Mr. Dormer was prevailed upon to comply with it.

In the next place, my lords, his lordship, in his Answer, denies, that he endeavoured to conceal the true state of the office from the suitors; or that he remembers any thing concerning the expression he is charged with; that Mr. Dormer was only gone into the country to take the air, and that he would return in a little time, and all would be well.

My lords, I must agree that, since his lordship is resolved to deny that he endeavoured to conceal the state of the office, it were to be wished by him that he could safely deny this expression, since, if true, it proves that endeavour directly upon him. But, my lords, the words were spoken by his lordship in open Court, and can be sworn to by a person, whose business in Court at that time was such, as can possibly leave no room for a doubt, or a mistake.

For farther proof, my lords, of his lordship's endeavour to conceal the state of this office, we shall shew, that a message was sent from the Lord Chancellor to Mr. Lightboun, with a proposal that he should advance 500*l.* towards this deficiency: acquainting him, at the same time, that it was for the honour of the Court; and that the appearance of a deficiency would be attended with ill consequences. But Mr. Lightboun refused to comply with that demand, which he thought would only skin over the wound, and not effectually cure it. And yet, my lords, this proposal which Mr. Lightboun had the honesty and courage to reject, was enforced by the impeached earl with the threats of a parliamentary enquiry; asserting, that if the Masters did not contribute towards the concealment of this deficiency, it would occasion a public enquiry; wherein, if it should appear that they had bought their places contrary to the statute 5 and 6 of Edward 6, it might go ill with him, but that it would fare much worse with them; turning even that parliamentary enquiry, which he ought to have dreaded as his sure punishment, into means for extorting of money. We have also proofs that at another meeting of the Masters, a farther demand was made upon them, in order to conceal the state of that office; but all the Masters then refusing to contribute to a concealment so unreasonable in its own nature, the Lord Chancellor paid that demand of 1,000*l.* himself; not out of any just regard to the suitors, but for his own profit and advantage, well knowing, that the notoriety of this insolvency would make the Masters' places less valuable; and therefore was content to part with this sum, to insure to himself a greater prospect of gain at his next sale. Nor was it necessary for those, who dealt at this auction, to bring any money of their own to it; the mere admittance into the office immediately giving them possession of a cash sufficient to answer his lordship's expectations. And thus beggars were his best purchasers; though sure to be the worst trustees for the public.

How great a hardship must it be, my lords, to the suitors of that High Court, to be contending many years for their just property, at an expence possibly no ways proportionable to their remaining fortunes; and to find at last, when they had obtained a decree in their favour, that their money was lost in a bankrupt office, without hopes of recovery? This is a consideration in which every man in Great Britain is more or less concerned. For what estate is there, which may not some way or other, in the course of a few years, come under the direction of that Court? How much then does it concern every individual, and even the legislature itself, that all its avenues of justice should be safe and open? But how much more does it concern the honour and conscience of the person who presides in it, if there should be a dangerous precipice in the way, to be the first in setting up a mark for all the world to avoid it.

But, my lords, if in this Article, which I have opened to your lordships, there appears a criminal endeavour to conceal the deficiency of this office, supported by a false assertion made in open court, in order to delude the suitors into an opinion that their money was safe, and a great neglect in not securing Mr. Dormer's person; in the Fourteenth Article, he will appear in a yet more guilty light, not only neglecting, as in the former, to enquire into his effects, but on enquiry made, and time had for mature deliberation, confirming a precarious and trifling composition, and tying down the suitors of the Court by his authority, to the certain diminution of one half at least of their effects, and in all probability to the irrecoverable loss of the whole.

My lords, in the Answer which his lordship returns to this Article, he denies none of the matters of fact contained in it, but admits them as they there stand charged. I shall therefore only make some observations on the nature of this transaction, and on the assertions in his lordship's Answer.

In the first place, my lords, he insinuates that Mr. Edwards used great endeavours to obtain payment from Wilson, but found them fruitless; Wilson having stopped payment long before.

My lords, I know not what endeavours his lordship can prove Mr. Edwards to have used: but whatever they were, they were not unlikely to prove fruitless, since, as his lordship adds immediately, Wilson had long before stopped payment: But this we can prove, that Wilson's books were never inspected by Mr. Edwards; that he never knew what his debts were; nor any thing more of him, than that Wilson came voluntarily to Mr. Edwards, and proposed of himself to pay him 1,400*l.* in ready money, and to assign over to him a debt of 10,000*l.* due from one Poulter, whose circumstances were still more precarious than his own.

In the next place, his lordship asserts, that he ordered this whole affair of Wilson's composition in the usual manner; and is informed, and believes, that this composition was made and agreed to, upon a consultation of all, or most of the Masters. But, my lords, we shall make it appear, that the delivery of the petitions, the orders made upon them, and the whole transaction of this affair, was carried on from first to last in a clandestine, private, and unusual manner.

As to the consent which his lordship says he believes the other Masters gave to this composition, we shall prove, my lords, that Mr. Edwards was the only person concerned on behalf of the suitors, and so far was he, or any of the rest of the Masters, from taking the best care they could, that the first draught of a composition, which Wilson brought, was accepted and settled between him and Mr. Hiccocks. And that when Mr. Edwards did mention this composition to some of the Masters, they were so far from approving of it, that Mr. Edwards acquainted the Lord Chancellor, that it was

the opinion of one of them, that a better composition was to be had. And another of the Masters was so far from agreeing to this method at all, that he proposed a commission of bankruptcy as the only means to bring this matter to a proper light.

But that light, my lords, was what his lordship was most afraid of. That would have discovered the deficiency of this office, which would have brought a disrepute upon others, and consequently have lowered their price. This was his lordship's only care; whilst for the rest he could sit unconcerned, and see so great a sum of the suitors' money wasting away to nothing, as it passed through the hands successively of three bankrupts.

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In their case, he could think it equitable to subject their estates to the losses of a Master in Chancery, who had squandered and gamed away their substance and his own. But in his own private affairs, how cautiously circumspect was his lordship? The least advantage was not neglected, and if a Master's place was to be alienated, a difference of guineas was meanly insisted upon, instead of the pounds which had before been oppressively extorted.

But my lords, in this Impeachment, the Commons, with regard to the dignity of their own proceedings, with regard to this august judicature, are not desirous to enlarge upon matters of smaller moment. His lordship might have enjoyed his hundred guineas in quiet, had not a long series of his conduct in so high a station, tended to destroy the reverence due to the laws, by an execution of them instrumental to the ruin of the subject.—Against apparent extortioners and robbers, we guard ourselves with a caution proportionable to the infamy of their characters: but when the sanctity of the laws, and the ensigns of authority, designed to defend and protect us, are made use of to invite us into ruin, how sure and extensive must that ruin be?

My lords, the Commons have beheld with the deepest concern such corrupt practices in this High Court, such as have deformed the beauty of justice, and rendered the administration of it grievous, and even fatal to the subject. They have beheld that minister of justice, whom the laws of the land have invested with an extraordinary power to punish frauds and deceits, himself carrying on a most pernicious deceit, to the great dishonour of the Court, and the ruin of its suitors. The guardian of orphans become their oppressor, the keeper of the king's conscience prostituting his own, and the dignity of his high station, to an ignominious traffic with the best bidder, and employing the scales of justice in the business of an usurer.

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office, had paid to the suitors 23,725*l.* 15*s.* 9½*d.* so that there remains due to the suitors of the Court, such as have paid their money into Mr. Dormer's office, the sum of 25,378*l.* 16*s.* 1½*d.* And this I believe to be a true state of the account, from such evidence as was laid before us.

Mr. *Lutwyche.* If the counsel on the other side don't think fit to ask this evidence any question, we beg leave to call Mr. Edwards, who succeeded Mr. Dormer, and will give your lordships an account of the state of the office, and what the deficiency was.

Mr. *Henry Edwards* sworn.

Mr. *Lutwyche.* My lords, we desire that Mr. Edwards may be asked, how much the deficiency is in Mr. Dormer's office?

Edwards. My lords, according to the account given in, the deficiency appears to be about twenty-five thousand odd hundred pounds; but since that, there is discovered about 1,500*l.* more, which was not brought into the account. It was discovered about three weeks or a month ago, and not before.

Mr. *Lutwyche.* I desire he may be asked, whether he knows of any other deficiency discovered?

Edwards. No, my lords, I do not.

Serj. *Probyn.* My lords, I desire Mr. Edwards may be asked, that as there hath been a further deficiency discovered, whether there hath not also been a discovery of further effects?

Edwards. Not as I know of. I am informed administration hath been lately taken out to Mr. Dormer, that there hath been a discovery of effects, but to what value I can't tell.

Mr. *Strange.* I would desire he may be asked, whether he hath had any account from the administrator?

Edwards. I have seen Mr. Paxton, who I understand administered. He told me he had discovered some effects, but he did not tell me to what value.

Mr. *Lutwyche.* If the counsel for the noble earl have done, we would beg leave to ask another question in relation to this matter: they examine what were the other effects of Mr. Dormer, we desire to know, if Mr. Edwards can inform us, how long ago this discovery was?

Edwards. I can't certainly tell. I believe it is about two months ago that Mr. Paxton hath had administration; and since that he hath made this discovery.

Mr. *Lutwyche.* It is proper from this question that hath been asked by the counsel for the noble lord, to call another witness to prove that there have been effects discovered, and that there have been goods laid by three or four years, and almost spoiled, because no care was taken of his effects.

Serj. *Probyn.* My lords, before this gentleman goes, I beg leave he may be asked one other question, whether he had not notice before Christmas last, that there were other effects of Mr. Dormer, and from whom?

Edwards. Yes, I believe, I had; and when I understood that Mr. Paxton was the person who had taken out the administration, I told him of it.

E. of *Macclesfield.* My lords, I desire he may be asked, who it was that brought him notice of these effects?

Edwards. It was a gentleman that came out of the country. I don't remember his name. He was a person that lived near the place where Mr. Dormer's country house was: I have forgot his name.

E. of *Macclesfield.* Can you recollect if you hear his name? Was his name Goodfellow?

Edwards. I believe it was.

E. of *Macclesfield.* I desire, if you can recollect, who he said he came from?

Edwards. I think he said he came from Mr. Cottingham; I don't know that he mentioned your lordship. I understood your lordship had been acquainted with it, but not that he acquainted you of it.

Mr. *Campbel* sworn.

Mr. *Lutwyche.* My lords, I desire that this witness may be asked, whether he knows of any goods or effects of Mr. Dormer being discovered, and at what time, and how long they had lain in that place where they were found?

Campbel. In the year 1721, I did buy a parcel of hops, but who they belonged to, I did not then know; but since I find they were Mr. Dormer's. They were 148 bags of hops. I sold 16 of them the same year, 101 since. I bought them of countrymen; some of one man, and some of another. I bought them by commission; but Mr. Dormer was not the man that employed me, neither did I receive the money from his hands.

Mr. *Lutwyche.* We desire to know how long the goods did lie in that place where they were; and whether there were any loss by the sale of those goods, being left so long there?

Campbel. They had lain there about three years, and I believe, modestly speaking, there was about 500*l.* loss upon them.

Mr. *Plummer.* I desire Mr. Campbel may be asked, how he came to know they were Mr. Dormer's hops?

Campbel. I never did know they were Mr. Dormer's hops, nor do I still know it, but as I am told.

Mr. *Plummer.* My lords, I desire he may be asked who told him so?

Campbel. This gentleman told me so [pointing to Mr. Paxton.]

Serj. *Pengelly.* My lords, we shall now call Mr. Paxton, who hath taken out administration by the direction of the lords commissioners of the great seal; and under that administration he hath possessed himself of those effects which were scattered and lay waste before.

Serj. *Probyn.* My lords, I beg leave this witness may be first asked one question: I think he hath said, that he bought those hops by commission, not by the order of Mr. Dormer, nor for Mr. Dormer; I desire he may be asked,

by whose direction they were kept so long by him?

Campbel. He that gave me the orders to buy them, was not Mr. Dormer, neither did he pay me the money. The reason they lay so long was, I had no orders to sell them.

Serj. *Probyn.* Who was the person that gave you orders to buy them?

Campbel. The person's name is Mr. Longmead.

Serj. *Probyn.* Where does this person live?

Campbel. He lives at Islington.

Com. Serj. My lords, I desire this witness may be asked, whether or no, about the time that these hops were bought, they were not very cheap, and at a low price?

Campbel. They were at a low price.

Com. Serj. Whether a great number of people have not kept hops upon a supposition that they would rise?

Campbel. Yes, they have, a great many.

Serj. *Probyn.* I desire he may be asked, whether he did not keep other hops as well as these by him, for the advantage of a better market?

Campbel. Yes, I had several other hops bought in that year that I kept for a better market, and still had a worse. I have hops by me cost me 5*l.* a hundred, not worth now 10*s.* a hundred.

E. of *Macclesfield.* How much a bag might that be?

Campbel. I can't tell how many hundred may be in a bag: I can't tell, because they are not weighed.

E. of *Macclesfield.* Whereabouts?

Campbel. Sometimes there are 300, sometimes 2 and a half, sometimes 2 and 3 qrs.

Mr. *Lutwyche.* My lords, to explain this matter I desire he may be asked, whether this loss he speaks of, of 4 or 500*l.* happened in the difference of the price, or by the hops being spoiled?

Campbel. Both by the difference of price, hops being cheaper, and by the antiquity of the hops.

Mr. *Lutwyche.* My lords, we desire he may be asked, who is this Mr. Longmead?

Campbel. He keeps a shop in Islington, he keeps a grocer's shop.

Mr. *Lutwyche.* My lords, I desire he may be asked, whether he is not Mr. Dormer's servant, or an agent for him?

Campbel. For any thing I know he was an agent for Mr. Dormer.

Com. Serj. My lords, we desire he may be asked, whether, for ought he knows, he was not an agent for Mr. Dormer?

Campbel. I believe he was an agent for him, and I have good reason to believe it, because he paid me all the money, and gave me orders to buy the goods.

E. of *Macclesfield.* I desire to know, whether the witness infers that Longmead was Mr. Dormer's agent because he paid him money; might not he have paid him the money though he had not been his agent?

L. C. J. *King.* Speak your own knowledge, whether he was agent for Mr. Dormer or no.

Campbel. I never did ask him whose they were: He employed me, and I bought the goods, and did suppose they were for Mr. Dormer. I never asked him whether they were his goods or not.

Sol. Gen. My lords, we desire that Mr. Paxton may be called, to shew how he discovered these effects.

Mr. *Nicholas Paxton* sworn.

Mr. *Lutwyche.* My lords, we desire Mr. Paxton may give your lordships an account what he knows of these hops.

Paxton. After I had got letters of administration to Mr. Dormer granted me, I did make what enquiry I could relating to the effects of Mr. Dormer. This Mr. Longmead came and told me of some hops; that he was servant to Mr. Dormer, and had bought them by his direction. Then we went to Mr. Campbel's, who took out a handful, and said they were saleable, and would bring in about 200*l.* He told me they cost 300*l.* and it would be best to dispose of them as fast as I could, that there might be no more loss. They are not yet sold, they may be worth about 200*l.*

Mr. *Lutwyche.* My lords, it is admitted by the answer, that Mr. Dormer absented himself and absconded. It was notorious, and talked of by every body: It will lie upon this noble lord to give an account what he did thereon. My lords, we will now proceed to give your lordships an account of this composition made with Wilson who was indebted to Dormer. This Wilson was a banker, the person that Mr. Dormer entrusted with money; and upon that occasion, there being a great debt due to Dormer, as is set forth in the Articles, a composition is made with Wilson on account of that debt. There were such dealings and proceedings therein, as will appear to your lordships to have been unusual and unwarrantable. We beg leave, therefore, to shew your lordships a written evidence, an order under the hand of this noble lord himself for this composition, though never drawn up: And indeed your lordships will observe, that through the whole course of these proceedings, there is not any one affidavit, or any one order, or any report filed in the usual manner. From whence we may infer, that it was intended to be a clandestine thing, that nothing might appear of it upon record, as other things do. The first thing we shall beg leave to shew is, an assignment from Mr. Dormer to one of the Masters in Chancery of this debt. When we have shewn that assignment, then we shall beg leave to give your lordships an account of the methods and proceedings thereupon.

Mr. *William Green* sworn, and the assignment produced.

Mr. *Lutwyche.* My lords, we desire this witness may be asked, whether he saw this deed executed, and by whom?

Green. My lords, I did see this deed executed by the late Mr. Dormer: I am one of the witnesses to it, and John Jones is the other witness.

Mr. *Lutwyche.* My lords, we desire this deed may be read.

[*Clerk* reads.] This indenture, made the six-and-twentieth day of July, A. D. 1721, and in the seventh year of the reign of our sovereign lord George, by the grace of God king of Great Britain, France and Ireland, defender of the faith, &c. Between Fleetwood Dormer of Lincoln's-inn in the county of Middlesex, esq. late one of the Masters of the High Court of Chancery of the one part, and Henry Edwards of Lincoln's-inn, aforesaid, esq. one of the Masters of the said High Court of Chancery of the other part. Whereas William Wilson, citizen and goldsmith of London, is and stands justly indebted unto the said Fleetwood Dormer upon account, in the full and just sum of 24,046*l.* 4*s.* of lawful money of Great Britain, or upwards, as by the books of the said William Wilson may and doth appear: And whereas the said Fleetwood Dormer is and stands justly indebted to divers persons, suitors in the said High Court of Chancery, in several considerable sums of money, for and on account of monies brought before and paid to him as one of the Masters of the said Court; Now, therefore, for the more speedy getting in and recovering of the aforesaid debt, due and owing by and from the said William Wilson as aforesaid; and also for the more speedy and effectual payment of all such sum and sums of money as are owing by the said Fleetwood Dormer as aforesaid: This indenture witnesseth, that for the ends and purposes aforesaid, and for and in consideration of the sum of 10*s.* of lawful money of Great Britain to the said Fleetwood Dormer in hand, paid by the said Henry Edwards, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged: He, the said Fleetwood Dormer, hath granted, assigned, transferred, and set over, and by these presents, doth grant, assign, transfer, and set over unto the said Henry Edwards, his executors, administrators, and assigns, the said debt or sum of 24,046*l.* 4*s.* and all and every part thereof, and all and every other debt or debts, sum or sums of money any ways due or owing by or from the said William Wilson to the said Fleetwood Dormer, and every part thereof, and all interest due, or to grow due, for the same, and all bonds, bills, notes, and other securities, for the same or any part thereof. And all the right, title, interest, property, benefit, advantage, claim, and demand whatsoever, both in law and equity of him, the said Fleetwood Dormer, of, in, to, or out of the same, and every or any part thereof, to have, hold, receive, perceive, take, and enjoy the said debt or sum of 24,046*l.* 4*s.* and all such other debts and sums of money as are due or owing to the said Fleetwood Dormer by the said William Wilson as aforesaid, and every part thereof, and all the benefit thereof, and all and singular other the premisses unto the said Henry Edwards, his executors, administrators, and assigns upon trust. Nevertheless, and to the intent and purpose that he, the said Henry Edwards, his executors, administrators, or assigns, shall and do issue, pay, apply, and dispose of the same, or such part or parts thereof, as shall from time to time be by him or them got in and received, in such manner as the said High Court of Chancery shall in that behalf order or direct, for and towards payment and satisfaction of such debts and sums of money as are now due and owing by the said Fleetwood Dormer, for, or on account of monies brought before and paid to him, as one of the Masters of the said Court. And in the mean time, after receipt thereof, and until the same shall be so paid, applied, and disposed of, shall and do deposit, lend, or place out the same, or any part thereof, in such manner as the said Court of Chancery shall in that behalf order or direct. And for the better enabling the said Henry Edwards, his executors, administrators, and assigns, to get, call in, and receive the aforesaid debt or sum of 24,046*l.* 4*s.* and other the said hereby assigned premisses upon the trusts aforesaid; He, the said Fleetwood Dormer, hath made, ordained, constituted and appointed, and in his place and stead put and deputed, and by these presents doth make, ordain, constitute and appoint, and in his place and stead, put and depute the said Henry Edwards, his executors, administrators, and assigns, his true and lawful attorney and attornies irrevocable for him the said Fleetwood Dormer, and in his name; but upon the trusts aforesaid, to ask, demand, sue for, recover, and receive of and from the said William Wilson, his heirs, executors, or administrators, and all and every, or any other person or persons whom it may concern, the aforesaid debt or sum of 24,046*l.* 4*s.* and other the said hereby assigned premisses, and every or any part thereof upon the trusts aforesaid; and likewise to compound for the same, and every or any part thereof, as he or they shall in their discretions think fit, and upon nonpayment of the same debt or sum, debts or sums, or any part thereof, or bring, commence, and prosecute such action or actions, suit or suits, either at law or in equity, or elsewhere, for the recovery thereof, as he or they shall be advised; and on payment thereof, or any part thereof, to give receipts and discharges for the same, and one or more attorney or attornies for the purpose aforesaid, to make and constitute, and at pleasure to revoke, and generally to do and act in the premisses for the recovering and obtaining of the said debt or sum of 24,046*l.* 4*s.* and other the said hereby assigned premisses, and every or any part thereof, as fully and effectually to all intents and purposes as he the said Fleetwood Dormer, his executors or administrators might have done; giving and hereby granting unto the said Henry Edwards, his executors, administrators and assigns, the full and whole power and authority of him the said Fleetwood Dormer, in and about the

premisses upon the trusts aforesaid; hereby ratifying, confirming, and allowing all, and whatever the said Henry Edwards, his executors, administrators, or assigns, or his or their attorney or attornies shall lawfully do, or cause to be done, in or about the premisses by virtue of these presents. And the said Fleetwood Dormer doth hereby, for himself, his heirs, executors, and administrators, covenant, promise, and agree to and with the said Henry Edwards, his executors, administrators, and assigns in manner following: that is to say, that he, the said Fleetwood Dormer, hath not received, compounded, released or discharged, or consented to the receiving, compounding, releasing, or discharging the said debt or sum of 24,046*l.* 4*s.* and other the hereby assigned premisses, or any part thereof, and that he, his executors or administrators shall not, nor will at any time hereafter, receive, compound, release or discharge the same or any part thereof, without the consent of the said Henry Edwards, his executors, administrators, or assigns, first thereunto had and obtained in writing under his or their hands. And further, that he the said Fleetwood Dormer, his executors and administrators, shall and will, at the requests, cost and charges of the said Henry Edwards, his executors, administrators, or assigns, make, do and execute, or cause and procure to be made, done, and executed, any further or other lawful and reasonable acts, deeds, powers and authorities, for the better enabling him, the said Henry Edwards, his executors, administrators, and assigns, to sue for, recover, and obtain the said debt and premisses hereby assigned, and every or any part thereof upon the trust aforesaid. And it is hereby declared and agreed, that the said Henry Edwards, his executors, administrators, or assigns, shall not be charged or chargeable with, or accountable for, any more monies than he or they shall actually receive, or shall come to his or their hands by virtue of these presents; and that it shall and may be lawful to and for the said Henry Edwards, his executors, administrators, and assigns, in the first place, by and out of the premisses, to deduct and reimburse him and themselves all such losses, costs, charges and expences as he, they, or any of them shall sustain or be put unto, by reason of the trust hereby in him reposed, or the management or execution thereof, or any other thing in any wise relating thereunto: In witness whereof, the said parties to these presents have hereunto interchangeably set their hands and seals the day and year first above-written.

FLEETWOOD DORMER.

Mr. Lutwyche. The next thing we shall trouble your lordships with in relation to this matter of the composition, is a Petition of Mr. Edwards, to which there is an answer. The answer is writ by Mr. Cottingham, and signed by the noble lord. I mentioned to your lordships that no order is drawn up upon it: nothing appears in public: therefore we must beg leave to prove the Earl's hand to this order made upon this Petition.

E. *of Macclesfield,* after taking the Petition in his hand, and looking upon the name subscribed to the Answer written upon it, said, My lords, this is my hand.

[*Clerk* reads,]

To the Right Honourable THOMAS Earl of MACCLESFIELD, Lord High Chancellor of Great Britain: The humble PETITION and Representation of HENRY EDWARDS, Esq. one of the Masters of the High and Honourable Court of Chancery.

Sheweth, That William Wilson, citizen and goldsmith of London is, and stands justly indebted to Fleetwood Dormer, esq. late one of the Masters of this Court upon account, in the full sum of 24,046*l.* 4*s.* as by the books of the said William Wilson doth and may appear.

That the said Fleetwood Dormer is and stands justly indebted to divers persons, suitors in this Court, in several considerable sums of money. And for the more speedy getting in and recovering the said debt, and effectual payment of all such sum and sums of money as are owing by the said Fleetwood Dormer as aforesaid, the said Fleetwood Dormer, for that end and purpose, hath by indenture, bearing date the 26th of July 1721, granted, assigned, transferred, and set over to your petitioner, his executors, administrators, and assigns, the said debt or sum of 24,046*l.* 4*s.* in trust, and to the intent that your petitioner shall pay, apply, and dispose of the same, or such part thereof as shall from time to time be by him got in and received of and from the said William Wilson, in such manner as this Court shall order and direct.

That it appears to your petitioner, that the said William Wilson is indebted to divers other persons in great sums of money, and for some time hath not been able to carry on his business, or to make good and pay the said debt so assigned to your petitioner; but hath lately offered to your petitioner and his other creditors to come to a composition, and to pay them in proportion the utmost he is able. And your petitioner, doubting whether he can with safety to himself agree to any such composition, humbly prays your lordship would be pleased to refer it to one of the Masters of this Court, to see if such composition, so proposed by the said Wilson, be for the benefit of the persons intituled to receive the same. And your petitioner shall ever pray, &c.

30*th of June,* 1722.

Be it as is prayed, and to that end let it be referred to Mr. Hiccocks one of the Masters of this Court, and let the Master speed his report: after which, such further order will be made as shall be just; of which give notice forthwith,

MACCLESFIELD, C.

Mr. Lutwyche. My lords, I beg leave to take notice, that in this Petition it is expressly re-

cited, that Dormer was indebted to the suitors of the Court, and that being so, we apprehend the greatest care should have been taken for their benefit. Your lordships shall see, in the progress of this thing, how it was transacted. I believe any person that is concerned in the Court of Chancery hath not known such a proceeding in the most trifling matter whatsoever.

My lords, the next thing is a second Petition, said to be with a report annexed, but we can't find it filed; here is a paper of Mr. Hiccocks not stampt nor filed, which we do apprehend to be the report meant, and therefore we desire that may be first read.

[*Clerk* reads,]

26th of July, 1722.

Whereas by an order made by the right hon. the Lord High Chancellor of Great Britain, the 30th June last, upon the humble Petition of Henry Edwards, esq.; one of the Masters of this Court, I am directed to see if the composition in the said order mentioned, to be offered or proposed to be made by William Wilson, citizen and goldsmith of London, to the said Mr. Edwards, as assignee of Fleetwood Dormer, esq. late one of the Masters of this Court, who was a creditor of the said William Wilson, for the sum of 24,046*l.* 4*s.* in the said Petition mentioned, before the benefit of the persons entitled to receive the same. I have been attended by the said Mr. Edwards, and by the said William Wilson, and considered of the several matters by the said Petition and order to me referred. And the said William Wilson hath under his hand in writing proposed to assign over to the said Mr. Edwards (as a composition for, and in full discharge of the said sum of 24,046*l.* 4*s.*) the sum of 10,000*l.* part of a larger sum due to the said William Wilson, from Edward Poulter of Hackney, in the county of Middlesex, gent. and to pay to the said Mr. Edwards in specie the sum of 1,463*l.* 2*s.* 1*d.* over and above the sum of 560*l.* already paid to the said Mr. Dormer in part of the said composition. And upon consideration had of the circumstances of the said William Wilson, and the said several matters, I am of opinion that the accepting the said composition will be for the benefit of the person or persons entitled to receive the same. All which I humbly certify and submit to his lordship, HICCOCKS.

Mr. *Lutwyche*. Now read the Petition of Mr. Edwards, and the order thereupon.

[*Clerk* reads,]

"To the Right Honourable Thomas Earl of Macclesfield, Lord High Chancellor of Great Britain,

"The Humble PETITION of Henry Edwards, Esq. one of the Masters of the High and Honourable Court of Chancery,

"Sheweth,

"That upon your Petitioner's former Petition preferred to your lordship relating to William Wilson, citizen and goldsmith of London, your lordship the 30th of June last was pleased to refer it to Mr. Hiccocks, one of the Masters of this Court, to see if the composition mentioned in the said Petition and order to be proposed by the said Wilson, would be for the benefit of the persons entitled to receive the same.

"That the said Mr. Hiccocks having been attended by your petitioner and the said Wilson, hath, pursuant to your lordship's said order, made his report, dated the 26th of July last, whereby he certifies, that he is of opinion that the accepting of the composition, in his report mentioned, will be for the benefit of the person or persons entitled to receive the same, as by the report annexed.

"Wherefore your petitioner most humbly prays your lordship to take into your consideration the matter of the said report, and to order your petitioner to accept of the said composition upon the terms therein mentioned, if your lordship shall so think fit, or to make such other or further order in the premises as to your lordship shall seem most meet.

"And your petitioner shall ever pray, &c."

"*3d August*, 1722.

"On the Report annexed be it as is prayed. Of which give notice forthwith,

"MACCLESFIELD, C."

Mr. *Lutwyche*. My lords, I must beg leave to make one observation upon this, that the noble lord may explain it, for I believe there is no precedent for it; when there is a composition thus to be made, and thus referred, and a report hath been made, the prayer of the Petition is, That Mr. Edwards may be ordered to accept of this composition, or to make such other order as his lordship should think fit. The answer to it is, Be it as is prayed, of which give notice forthwith; by which I suppose the parties understood that it was ordering Mr. Edwards to accept of this composition. Now it is wonderful to me, if he was ordered to accept of the composition, why it is said, Give notice forthwith. What? when the thing is done? Besides, there is another thing more material, to whom should such notice be given? Surely to the suitors of the Court. But it is well known his lordship had not appointed any solicitor for the suitors of the Court, and they had no notice, though there is a semblance or shew of what is done in other cases. We shall beg leave to shew next to your lordships, that these orders on these petitions, this report, and these proceedings, were not one of them entered or filed as orders usually are.

Mr. *Plummer*. My lords, I beg leave to make one observation before this matter goes over. The Petition is by Mr. Edwards only, one of the Masters, and it is, that my lord Macclesfield would be pleased to order him to accept of the composition. None of the suitors of the Court, who were the persons entitled to receive the same, are petitioners.

Clerk reads two Certificates from, and signed by Edward Goldsbrough, deputy register, that

there were no such orders entered, nor no such report filed.

Mr. *Lutwyche.* My lords, the composition is signed by William Wilson. I desire Mr. Edwards may be asked, whether he knows Mr. Wilson's hand?

Edwards. This is signed by Mr. Wilson; it is Mr. Wilson's hand.

[*Clerk* reads,]

"Whereas a suit in Chancery is now depending between Mr. Edward Poulter of Hackney and myself, for the sum of 22,060*l.* 12*s.* 5*d.* which he agreed to pay me for and upon closing all accompts between us: and whereas Fleetwood Dormer, esq. late a Master in the High Court of Chancery, being indebted to divers persons, suitors in the said Court, in several considerable sums of money, for and on account of money brought before, and paid to him as one of the Masters of the said Court, he the said Fleetwood Dormer, for the better payment thereof, did by assignment, dated the 26th of July, 1721, assign over to Henry Edwards, esq. one of the Masters of the said Court, a debt or sum of 24,046*l.* 4*s.* which was and is due and owing from me to him, the said Fleetwood Dormer: And whereas I being incapable of paying the said debt of 24,046*l.* 4*s.* did lately propose as a composition for, and in full discharge of the same, to assign to the said Henry Edwards the sum of 10,000*l.* part of the sum of 22,060*l.* 12*s.* 5*d.* due to me from the said Edward Poulter; as aforesaid; and likewise to pay to him, the said Henry Edwards, the sum of 1,463*l.* 2*s.* 1*d.* in specie, over and above the sum of 560*l.* before paid to the said Mr. Dormer, in part of the said composition: And whereas on a petition preferred to the right honourable the Lord High Chancellor of Great Britain, by the said Henry Edwards, representing the matter of the said proposal; and after several subsequent proceedings had upon the said Petition, his lordship was pleased, by order dated the 3rd of August, 1722, to order the said Henry Edwards to accept of the said composition: and the said Henry Edwards having thereupon agreed to accept of the said composition, accordingly I do hereby, in consideration thereof, assign over to the said Henry Edwards the sum of 10,000*l.* part of the sum of 22,060*l.* 12*s.* 5*d.* due to me from the said Edward Poulter as aforesaid, having already paid him, the said Mr. Edwards, the other sum of 1,463*l.* 2*s.* 1*d.* before-mentioned. And I do hereby promise to pay to the said Henry Edwards, esq. or his order, the said sum of 10,000*l.* on my recovering the sum of 22,060*l.* 12*s.* 5*d.* aforesaid, or otherwise to pay him a like proportion of what I shall recover, more or less, from the said Edward Poulter. And I do hereby further promise, that I will not do any act to encumber or discharge the demand I now have against the said Edward Poulter, without the consent of the said Henry Edwards. And whereas the said Mr. Edwards does now accept of the said composition, I do hereby declare and agree, that if I do not on demand pay him the before-mentioned proportion of what I shall recover from the said Edward Poulter as aforesaid, or do any ways discharge the demand I now have against him, without the consent of the said Henry Edwards, that then the said composition so made by the said Edwards, shall be void, and of no effect, as if it had never been made. And I do hereby further promise, I will at my own charge prosecute the said suit, and also do and execute all further and other acts that shall be necessary for the better assigning to the said Henry Edwards, esq. the before-mentioned proportion of what I shall or may recover as aforesaid, from him the said Edward Poulter, as he the said Henry Edwards shall at any time require. Witness my hand this 28th day of August, 1722. WILLIAM WILSON.

"31st of October, 1724. Paid to Henry Edwards, esq. the sum of 1,000*l.* in part of this note of assignment. WILLIAM WILSON."

Mr. *Lutwyche.* My lords, this composition which hath been read to your lordships, is recited to be in full satisfaction and discharge of Wilson's debt. Now we beg leave Mr. Edwards may be asked, Whether he made any application to the earl of Macclesfield, before the first petition was preferred?

Edwards. My lords, I had received proposals from Mr. Wilson; he came to me and told me, he had a sum of money in his hands, and was willing to pay the debt to Mr. Dormer, in proportion with his other creditors, and asked me whether I would accept of a composition, and give him a discharge in full? I told him I had no power to make a composition, but however, I would represent it to some of the Masters; and accordingly I spoke to Mr. Hiccocks, who was then senior Master, and told him the proposal Mr. Wilson had made; and I believe I mentioned it to others, but especially to Mr. Hiccocks, he being the senior Master, and more particularly concerned in Mr. Dormer's affairs. Mr. Hiccocks was of opinion I could not safely make a composition. I asked, What method then was the most proper to be taken? If that was really all he had to pay, I had better secure that than have nothing. He said he did not see why it might not be in this case as in other cases; whether upon a petition to my Lord Chancellor, he might not direct an enquiry to be made by a Master, whether it was for the benefit of the parties to make such composition or not? Upon that I waited upon my Lord Chancellor, and acquainted him with Mr. Wilson's proposal. I told his lordship, I thought I had not power to do it. He said, I think so too; I don't see that you have power to do it. Said I, I am informed that it is usual in cases of this nature, to apply to the Court by petition, that it may be referred to a Master, to see whether the accepting of this composition be for the benefit of the parties concerned or not.

cited, that Dormer was indebted to the suitors of the Court, and that being so, we apprehend the greatest care should have been taken for their benefit. Your lordships shall see, in the progress of this thing, how it was transacted. I believe any person that is concerned in the Court of Chancery hath not known such a proceeding in the most trifling matter whatsoever.

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Whereas by an order made by the right hon. the Lord High Chancellor of Great Britain, the 30th June last, upon the humble Petition of Henry Edwards, esq.; one of the Masters of this Court, I am directed to see if the composition in the said order mentioned, to be offered or proposed to be made by William Wilson, citizen and goldsmith of London, to the said Mr. Edwards, as assignee of Fleetwood Dormer, esq. late one of the Masters of this Court, who was a creditor of the said William Wilson, for the sum of 24,046*l.* 4*s.* in the said Petition mentioned, before the benefit of the persons entitled to receive the same. I have been attended by the said Mr. Edwards, and by the said William Wilson, and considered of the several matters by the said Petition and order to me referred. And the said William Wilson hath under his hand in writing proposed to assign over to the said Mr. Edwards (as a composition for, and in full discharge of the said sum of 24,046*l.* 4*s.*) the sum of 10,000*l.* part of a larger sum due to the said William Wilson, from Edward Poulter of Hackney, in the county of Middlesex, gent. and to pay to the said Mr. Edwards in specie the sum of 1,463*l.* 2*s.* 1*d.* over and above the sum of 560*l.* already paid to the said Mr. Dormer in part of the said composition. And upon consideration had of the circumstances of the said William Wilson, and the said several matters, I am of opinion that the accepting the said composition will be for the benefit of the person or persons entitled to receive the same. All which I humbly certify and submit to his lordship, HICCOCKS.

Mr. *Lutwyche*. Now read the Petition of Mr. Edwards, and the order thereupon.

[*Clerk* reads,]

"To the Right Honourable Thomas Earl of Macclesfield, Lord High Chancellor of Great Britain,

"The Humble PETITION of Henry Edwards, Esq. one of the Masters of the High and Honourable Court of Chancery,

"Sheweth,

"That upon your Petitioner's former Petition preferred to your lordship relating to William Wilson, citizen and goldsmith of London, your lordship the 30th of June last was pleased to refer it to Mr. Hiccocks, one of the Masters of this Court, to see if the composition mentioned in the said Petition and order to be proposed by the said Wilson, would be for the benefit of the persons entitled to receive the same.

"That the said Mr. Hiccocks having been attended by your petitioner and the said Wilson, hath, pursuant to your lordship's said order, made his report, dated the 26th of July last, whereby he certifies, that he is of opinion that the accepting of the composition, in his report mentioned, will be for the benefit of the person or persons entitled to receive the same, as by the report annexed.

"Wherefore your petitioner most humbly prays your lordship to take into your consideration the matter of the said report, and to order your petitioner to accept of the said composition upon the terms therein mentioned, if your lordship shall so think fit, or to make such other or further order in the premises as to your lordship shall seem most meet.

"And your petitioner shall ever pray, &c."

"3*d August*, 1722.

"On the Report annexed be it as is prayed. Of which give notice forthwith,

"MACCLESFIELD, C."

Mr. *Lutwyche*. My lords, I must beg leave to make one observation upon this, that the noble lord may explain it, for I believe there is no precedent for it; when there is a composition thus to be made, and thus referred, and a report hath been made, the prayer of the Petition is, That Mr. Edwards may be ordered to accept of this composition, or to make such other order as his lordship should think fit. The answer to it is, Be it as is prayed, of which give notice forthwith; by which I suppose the parties understood that it was ordering Mr. Edwards to accept of this composition. Now it is wonderful to me, if he was ordered to accept of the composition, why it is said, Give notice forthwith. What? when the thing is done? Besides, there is another thing more material, to whom should such notice be given? Surely to the suitors of the Court. But it is well known his lordship had not appointed any solicitor for the suitors of the Court, and they had no notice, though there is a semblance or shew of what is done in other cases. We shall beg leave to shew next to your lordships, that these orders on these petitions, this report, and these proceedings, were not one of them entered or filed as orders usually are.

Mr. *Plummer*. My lords, I beg leave to make one observation before this matter goes over. The Petition is by Mr. Edwards only, one of the Masters, and it is, that my lord Macclesfield would be pleased to order him to accept of the composition. None of the suitors of the Court, who were the persons entitled to receive the same, are petitioners.

Clerk reads two Certificates from, and signed by Edward Goldsbrough, deputy register, that

there were no such orders entered, nor no such report filed.

Mr. *Lutwyche.* My lords, the composition is signed by William Wilson. I desire Mr. Edwards may be asked, whether he knows Mr. Wilson's hand?

Edwards. This is signed by Mr. Wilson; it is Mr. Wilson's hand.

[*Clerk* reads,]

"Whereas a suit in Chancery is now depending between Mr. Edward Poulter of Hackney and myself, for the sum of 22,060*l.* 12*s.* 5*d.* which he agreed to pay me for and upon closing all accompts between us: and whereas Fleetwood Dormer, esq. late a Master in the High Court of Chancery, being indebted to divers persons, suitors in the said Court, in several considerable sums of money, for and on account of money brought before, and paid to him as one of the Masters of the said Court, he the said Fleetwood Dormer, for the better payment thereof, did by assignment, dated the 26th of July, 1721, assign over to Henry Edwards, esq. one of the Masters of the said Court, a debt or sum of 24,046*l.* 4*s.* which was and is due and owing from me to him, the said Fleetwood Dormer: And whereas I being incapable of paying the said debt of 24,046*l.* 4*s.* did lately propose as a composition for, and in full discharge of the same, to assign to the said Henry Edwards the sum of 10,000*l.* part of the sum of 22,060*l.* 12*s.* 5*d.* due to me from the said Edward Poulter; as aforesaid; and likewise to pay to him, the said Henry Edwards, the sum of 1,463*l.* 2*s.* 1*d.* in specie, over and above the sum of 560*l.* before paid to the said Mr. Dormer, in part of the said composition: And whereas on a petition preferred to the right honourable the Lord High Chancellor of Great Britain, by the said Henry Edwards, representing the matter of the said proposal; and after several subsequent proceedings had upon the said Petition, his lordship was pleased, by order dated the 3rd of August, 1722, to order the said Henry Edwards to accept of the said composition: and the said Henry Edwards having thereupon agreed to accept of the said composition, accordingly I do hereby, in consideration thereof, assign over to the said Henry Edwards the sum of 10,000*l.* part of the sum of 22,060*l.* 12*s.* 5*d.* due to me from the said Edward Poulter as aforesaid, having already paid him, the said Mr. Edwards, the other sum of 1,463*l.* 2*s.* 1*d.* before-mentioned. And I do hereby promise to pay to the said Henry Edwards, esq. or his order, the said sum of 10,000*l.* on my recovering the sum of 22,060*l.* 12*s.* 5*d.* aforesaid, or otherwise to pay him a like proportion of what I shall recover, more or less, from the said Edward Poulter. And I do hereby further promise, that I will not do any act to encumber or discharge the demand I now have against the said Edward Poulter, without the consent of the said Henry Edwards. And whereas the said Mr. Edwards does now accept of the said composition, I do hereby declare and agree, that if I do not on demand pay him the before-mentioned proportion of what I shall recover from the said Edward Poulter as aforesaid, or do any ways discharge the demand I now have against him, without the consent of the said Henry Edwards, that then the said composition so made by the said Edwards, shall be void, and of no effect, as if it had never been made. And I do hereby further promise, I will at my own charge prosecute the said suit, and also do and execute all further and other acts that shall be necessary for the better assigning to the said Henry Edwards, esq. the before-mentioned proportion of what I shall or may recover as aforesaid, from him the said Edward Poulter, as he the said Henry Edwards shall at any time require. Witness my hand this 28th day of August, 1722. WILLIAM WILSON.

"31st of October, 1724. Paid to Henry Edwards, esq. the sum of 1,000*l.* in part of this note of assignment. WILLIAM WILSON."

Mr. *Lutwyche.* My lords, this composition which hath been read to your lordships, is recited to be in full satisfaction and discharge of Wilson's debt. Now we beg leave Mr. Edwards may be asked, Whether he made any application to the earl of Macclesfield, before the first petition was preferred?

Edwards. My lords, I had received proposals from Mr. Wilson; he came to me and told me, he had a sum of money in his hands, and was willing to pay the debt to Mr. Dormer, in proportion with his other creditors, and asked me whether I would accept of a composition, and give him a discharge in full? I told him I had no power to make a composition, but however, I would represent it to some of the Masters; and accordingly I spoke to Mr. Hiccocks, who was then senior Master, and told him the proposal Mr. Wilson had made; and I believe I mentioned it to others, but especially to Mr. Hiccocks, he being the senior Master, and more particularly concerned in Mr. Dormer's affairs. Mr. Hiccocks was of opinion I could not safely make a composition. I asked, What method then was the most proper to be taken? If that was really all he had to pay, I had better secure that than have nothing. He said he did not see why it might not be in this case as in other cases; whether upon a petition to my Lord Chancellor, he might not direct an enquiry to be made by a Master, whether it was for the benefit of the parties to make such composition or not? Upon that I waited upon my Lord Chancellor, and acquainted him with Mr. Wilson's proposal. I told his lordship, I thought I had not power to do it. He said, I think so too; I don't see that you have power to do it. Said I, I am informed that it is usual in cases of this nature, to apply to the Court by petition, that it may be referred to a Master, to see whether the accepting of this composition be for the benefit of the parties concerned or not.

Yes, says my lord, I think that is very proper, that will indemnify you, I would have you prefer a petition; which accordingly I did.

Mr. *Lutwyche.* I would beg leave to ask in relation to what he mentions, that it was taken notice of that he had no power to make such composition, whether any thing was said whether my lord Macclesfield had such a power?

Edwards. No, there was nothing said of that.

Mr. *Plummer.* My lords, I desire he may be asked, whether any of the suitors were acquainted with this intended composition?

Edwards. No.

Sol. Gen. Did my lord Macclesfield give any direction to give notice to any of the suitors?—*Edwards.* No.

Mr. *Plummer.* My lords, I desire he may be asked, if he himself attended Mr. Hiccocks, when Mr. Wilson was before Mr. Hiccocks?

Edwards. I am not sure I was there at any time with Mr. Wilson.

Mr. *Plummer.* If he knows what methods were taken to know what Mr. Wilson was worth?

Edwards. I understood that Mr. Hiccocks and Mr. Rogers, the two senior Masters, upon Mr. Dormer's absenting himself, had Mr. Dormer's accompts laid before them, and that they were directed to inspect those matters; and I was informed they did look into Dormer's books, and had also the perusal and inspection of Mr. Wilson's books, to see how Mr. Dormer's affairs stood in those books.

Mr. *Plummer.* My lords, I desire Mr. Edwards may be asked, if any body was employed for the suitors on their behalf?

Edwards. I was before Mr. Hiccocks, but not present with Mr. Wilson.

Mr. *Plummer.* I ask if any body on the suitors' behalf was before Mr. Hiccocks, when Mr. Wilson was there, to see and cross-examine him?

Edwards. I don't remember there was.

Serj. *Pengelly.* My lords, I desire Mr. Edwards may be asked, Whether this Petition is of his own hand-writing?

Edwards. No, my lords.

Serj. *Pengelly.* Do you know whose it is?

Edwards. It is my clerk's hand.

Serj. *Pengelly.* Whether the two last lines were struck out before the answer to the Petition, and by what hand?

Edwards. I don't know when they were struck out.

Serj. *Pengelly.* My lords, we will beg leave to mention what it is. At the end of the first Petition, the Master desires an indemnification by the order of the Court: part of the Petition is, that he may be indemnified and saved harmless in making such composition. But that is struck out before the answer, which shews, as I humbly apprehend, the very notice that the earl of Macclesfield himself took, how dangerous and hazardous that transaction was.

Read the words.

[*Clerk* reads.] "And that your petitioner may be indemnified and saved harmless in making such composition."

Serj. *Pengelly.* Do these words stand now in the reading?

Clerk. No, they are razed out.

Edwards. I remember this was a paper that I laid before the honourable committee. I was a little surprized to see those words struck out; but when they were struck out I can't say, nor by whom.

Mr. *Lutwyche.* I desire he may be asked, if they were struck out before he delivered the Petition into the committee?

Edwards. Yes, they were.

Sol. Gen. My lords, we desire he may be asked, how much he hath received of this composition?

Lord *Lechmere.* I desire him to explain himself, whether these words were struck out after the Petition delivered, and before the order made by the noble earl?

Edwards. My lords, I don't remember ever to have taken notice, that those words were struck out, till I had occasion to look for it to lay it before the committee.

Lord *Lechmere.* Whether he hath any doubt, whether they were struck out before they were delivered into the committee?

Edwards. They were struck out before I delivered them into the committee.

Sol. Gen. In whose custody was this Petition?

Edwards. I believe part of the time in Mr. Hiccocks's; Mr. Hiccocks sent it to me, and I have had it ever since.

Serj. *Pengelly.* Whether he struck out these words that were inserted for his own indemnification?

Edwards. No, upon my oath I did not.

E. of *Abingdon.* As I apprehend, there was no commission of bankruptcy against Wilson, therefore I would know what method was taken to inform the Court of the real substance and ability of Wilson before this composition was made?

Edwards. I know of no other application made to the Court by Mr. Wilson.

E. of *Abingdon.* Was Wilson examined upon oath?

Edwards. Mr. Hiccocks told me that Mr. Wilson had made an affidavit that this sum of money which he proposed as a composition, was what he was able to pay in proportion with the rest of his creditors, and that he grounded his report thereupon.

Mr. *Lutwyche.* Was this affidavit ever filed?

Edwards. No, my lords.

Sol. Gen. My lords, we desire he may give an account, how much he hath received of this 10,000*l.*?

Edwards. The first sum was 1,400 and odd pounds, and the sum of 1,000*l.* since.

Sol. Gen. How much of this was of the 10,000*l.*?—*Edwards.* Only the 1,000*l.*

Sol. Gen. What is become of Poulter?

Edwards. Wilson hath told me that he is in Holland or France.

Sol. Gen. What was his character, as to substance at the time of his composition?

Edwards. I never met any body that could give an account of his character. All I heard of him was from Mr. Wilson himself.

Mr. *Lutwyche.* My lords, I desire he would acquaint your lordships, when the 1,000*l.* was paid?

Edwards. I can't recollect exactly the time.

Mr. *Lutwyche.* As near as you can, before or since Christmas?

Edwards. I believe it was in September or October last; I believe in October.

Sol. Gen. I desire Mr. Edwards may inform your lordships what he thought of Poulter at the time of the composition, whether he looked upon him as a man of substance?

Edwards. I could make no judgment of the man; I never saw him before; I know nothing of him, otherwise than as Mr. Wilson told me.

Sol. Gen. That is no answer to my question, which is, what his opinion was as to his substance at the time of the composition, whether he would have trusted him with 100*l.*?

Edwards. I can't tell what answer to give to it; Wilson represented him to me as a man able to pay the debt; and from his representation I believed that Poulter was sufficient.

Sol. Gen. Whether he enquired into Poulter's character?

Edwards. There was nobody I knew to enquire of.

Sol. Gen. Did he enquire, or did he not?

Edwards. I asked Mr. Wilson as many questions as I could, and what his opinion was about him. He told me he believed he was able to pay his debts, and he told me one Helbut, a Jew, who was his bail, could tell his substance. I happened to meet Helbut at the Rainbow coffee-house, and I asked him if he knew Poulter? He said Yes. Says I, Is he a man of any substance, what is he? No, says he, I believe he is in very mean circumstances. This is all I ever asked.

Sol. Gen. What was your opinion of this man's abilities?

Edwards. My lords, I told you that as to the account I had of him, Mr. Wilson gave me a great assurance that he was a man of ability.

Mr. *Plummer.* I desire he may be asked, whether Mr. Wilson hath not paid his whole debt to several other creditors?

Edwards. I am informed he hath paid his full debt to some creditors.

Mr. *Plummer.* My lords, I desire he may be asked, what directions he received from my lord Macclesfield to enquire into this man's circumstances?

Edwards. I had no directions.

Mr. *Plummer.* Whether any enquiry was made by the earl of Macclesfield?

Edwards. Not as I know of.

Mr. *Lutwyche.* I think he mentioned one Helbut as his bail: I desire to know, whether there was a suit commenced for this debt assigned?

Edwards. I understood it was for this debt assigned which Wilson recovered at law.

Serj. *Pengelly.* My lords, I desire he may be asked, whether Mr. Poulter hath appeared here and been esteemed solvent, or a person quite gone away?

Edwards. I have not seen Mr. Poulter, nor any that have seen him, for some considerable time.

Serj. *Pengelly.* My lords, I beg leave to make one observation, and it is to save your lordships' time; that is, that you would be pleased to observe in the proceedings upon this Article, the several acts and orders made by the earl of Macclesfield relating to this deficiency of Dormer's, do take notice of his deficiency, and you will find the Earl himself doing one act which makes a deficiency; that is, compounding a debt due from Wilson to Dormer; and therefore those orders having been read before your lordships, you will please to retain them in your memory, till we come to the 6th Article, wherein it is charged that there was a deficiency in Dormer's office, and there we shall shew that this noble lord declared that he never knew of any deficiency; and by an order made in Court, pronounced by himself, he then did direct that a Master should enquire if there was any deficiency in this office; so that those public acts won't be necessary to be read over again upon that Article, but as now produced, will be sufficient to prove the notice the noble earl had of this deficiency, and that even he made part of the deficiency himself.

Mr. *Lutwyche.* My lords, we have done upon these two Articles we have opened.

Serj. *Probyn.* My lords, if the gentlemen have done, we desire to ask some questions; and first we beg leave that he may be asked, whether any of the Masters were acquainted with this agreement or composition with Mr. Wilson?

Edwards. I don't remember that any were but Mr. Hiccocks.

Serj. *Probyn.* My lords, we desire he may recollect whether there was any consultation between him and any other Master, as to the manner that this composition should be made before it was accepted, and whether it was a reasonable composition or not?

Edwards. I mentioned it to two or three other Masters at the public office, but I can't charge my memory particularly who they were.

Serj. *Probyn.* Was that before the time that the composition was made?

Edwards. Before the time I applied to my lord Macclesfield.

Com. Serj. My lords, I desire that Mr. Edwards may inform your lordships from whom it was that he received this information, that several of the creditors of Wilson were paid their full debts?

Edwards. The first person that informed me

was sir Laurence Carter; I happened to be at his chambers, and naming to me the affair of Wilson, he told me his brother, Mr. Thomas Carter, had received 120*l.* which Mr. Wilson owed him, and which was his whole sum.

Com. Serj. I desire to know when it was that he received that sum?

Edwards. There was no time mentioned when that was paid him: as near as I can recollect the time, when sir Laurence Carter told me this, it was soon after the composition.

Com. Serj. My lords, I desire he may recollect, whether this payment was made before the composition or after? Did not he say it was before the composition?

Edwards. No, I don't remember that.

Serj. *Probyn.* I desire he may be asked, whether he knows any thing of this payment to Mr. Carter of his own knowledge?

Edwards. No, I don't know it of my own knowledge, but I believe it to be very true.

Serj. *Probyn.* Since he had this information of one debt being paid entirely, though he had compounded with others, I desire he may be asked, whether he ever charged Mr. Wilson with it?

Edwards. Yes, my lords, I did: a little after I went to Mr. Wilson, and I told him that I was informed he had paid Mr. Thomas Carter his full demand, and it was rumoured about that he had paid several others their full debts, and that it looked unfair. Says he, this money was lent me by my particular friend, to pay off some little straggling debts to keep me up in my business, and therefore I was unwilling he should lose it.

Serj. *Probyn.* Whether did he apprehend this to be a new debt contracted since his failure, or an old one due before?

Edwards. I don't know when the debt was contracted.

Com. Serj. I apprehend he says, that this money was lent him by some friends to set him up again?

Mr. *Lutwyche.* Really, my lords, we would not interrupt the gentlemen, but I take it, what they are going on with is not evidence. We must submit it, whether what Mr. Wilson said is evidence, either on the one side or on the other?

Com. Serj. We must humbly be in your lordships judgment, whether this kind of evidence be not as proper on our side as on the other? Most of the evidence Mr. Edwards has given to affect the noble Earl, has been only informations he has had from Wilson or sir Laurence Carter, and yet now the learned Manager objects the same information must not be admitted as evidence on the other side. I apprehend if any favour is to be shewn on either side, it should rather go on in the support of innocence.

Lords. Go on, go on.

Sol. Gen. My lords, we don't oppose their going on, we only beg leave to set your lordships right. We did not give a tittle of evidence of what Mr. Wilson said; we have proved the petitions, we have proved the orders, we have proved the facts; we did not mention a word of sir Laurence Carter, it sprung from this examination; but we are willing they may go on, if your lordships think fit.

E. of *Macclesfield.* My lords, I apprehend there is no occasion to give your lordships any trouble. If what this gentleman hath said, with relation to Mr. Wilson's payment to his creditors, is no evidence, it needs no answer.

Com. Serj. My lords, we desire that Mr. Edwards may inform your lordships, whether or no there was any consultation among the Masters relating to this matter, and what their opinion was?

Edwards. I don't know of any consultation about it.

Com. Serj. We desire that he may inform your lordships, whether he made any acknowledgment for his being admitted into his office, and to whom this money was paid, and to what purpose, and how applied?

Edwards. My lords, the steps I took to be admitted into my office, if your lordships will give me leave to trouble your lordships with the narrative, were these: first, I applied to Mr. Godfrey one of the Masters, with whom I had most acquaintance: I told him I heard Mr. Dormer's office would be disposed of; he told me he believed it would. Says I, If I could be accepted I have some thoughts of treating for it. What is the usual method in those cases to be recommended to my Lord Chancellor? Says he, You must apply to my lord's secretary, Mr. Cottingham; accordingly I did, and I told Mr. Cottingham that I had heard Mr. Dormer's office was to be disposed of. Mr. Cottingham told me it was to be disposed of. I then talked to him about the terms. Mr. Cottingham told me, As to the price and the person, my lord Macclesfield had left it entirely to the other Masters; for whatsoever that place could fetch, was intended to go towards making up Mr. Dormer's deficiency. Upon that, my lords, I went again to Mr. Godfrey, and after a meeting or two, I concluded to give 5,000*l.* if I could be admitted. Whether Mr. Godfrey, or Mr. Cottingham, or who went to my lord, I can't tell. I had not the honour to see my lord till I was admitted: but upon these terms I was approved. I had directions, I can't say whether Mr. Godfrey or Mr. Cottingham gave me the directions, that I should pay my money into the hands of Mr. Rogers the then senior Master; accordingly I did pay 5,000*l.* and in three or four days after, I had the honour to be admitted and sworn in.

Mr. *Strange.* My lords, I desire he may be asked, whether at the time of his admission any presents were made by him to the earl of Macclesfield, or to his secretary?

Edwards. None at all, but the secretary's fees as usual in those cases.

Mr. *Strange.* Whether at the time he agreed to pay the sum of 5,000*l.* for the office, he knew how the money was to be applied?

Edwards. Yes, Mr. Godfrey told it me when

I went back to him from Mr. Cottingham; I remember to have asked him several questions, and made him several proposals relating to the offices, for we differed a great deal about its value; I think I first proposed 3,000*l.* for it; but he disliking that and some other offers I made him, I desired to know how much it was my lord Macclesfield insisted upon? To which he answered, that it was not my lord's intention to take any thing for the admittance, but that he had left it to the disposal of the Masters, to make the most of it for the benefit of the office.

Com. Serj. Whether he knows how this money was disposed of, and to what use employed?

Edwards. I can't remember the time, but some short time before Mr. Rogers surrendered his office, he paid me back this 5,000*l.* which I, in a little time, paid to the suitors of the Court.

Mr. Strange. Whether before he surrendered his office, he had any discourse with the Masters how Mr. Dormer's debts were secured?

Edwards. No otherwise than upon this treaty. I told Mr. Cottingham, I hear there is a discourse of a deficiency in Mr. Dormer's office; says he, I believe there is, but how much I can't tell; but that can be no objection to you, because you are to answer for no more than you receive. Matters are all settled and taken care of, that what deficiency soever there is shall be made good.

Serj. *Probyn.* By whom?

Edwards. He did not say by whom, or in what manner.

Serj. *Probyn.* Had you any discourse with any other Master?

Mr. Plummer. My lords, I beg leave to make one observation. The counsel says with any other Master, and the gentleman at the bar says it was Mr. Cottingham told him so.

Serj. *Probyn.* This gentleman I am examining is one of the Masters, therefore it is not improper to ask, whether he had any discourse with any other of the Masters?

Edwards. I made the same objection to Mr. Godfrey, and he answered me much the same. Mr. Godfrey said he could not tell what the deficiency was, but whatsoever it was, that would be all settled and made good.

Serj. *Probyn.* As he had this discourse with Mr. Godfrey, I desire he may be asked, whether he hath not likewise had some discourse with Mr. Rogers how this deficiency was to be made good?

Edwards. No; I don't remember I had any discourse with Mr. Rogers.

Com. Serj. My lords, I desire he may inform your lordships, whether at any other time he had any discourse with any of the Masters about this matter?

Edwards. My lords, I often talked upon this subject with the Masters, as a matter which very much concerned my office. This I mentioned at the time I came in. They were then all of opinion that this deficiency was to be made good. I don't remember that any body told me in what method or particular way it was to be made good.

Com. Serj. I desire he would inform your lordships, as near as he can remember, whether it was said that it would be made good, or that it was to be made good?

Edwards. I can't remember the distinct words, I took it to have the same tendency and meaning.

Serj. *Probyn.* I desire he may be asked, whether he hath not several times, and on many occasions, heard the Masters declare, that this deficiency was to be made good, and by the Masters?

Edwards. I have heard them several times declare, that they did not doubt but it would be made good; but I never heard them say that it would be made good by the Masters. I have often heard the Masters say they would not make it good.

Serj. *Probyn.* I desire he may be asked, whether about the time that the Masters advanced the 500*l.* a-piece, he did not hear them declare how this deficiency of Dormer was to be made up?

Edwards. My lords, when I came into the office, I think the very day that I was admitted, Mr. Rogers paid 500*l.*; eight more paid 500*l.* a-piece, some at one time, some at another; they did not all pay at the same time. That, I heard, was to go towards making up this deficiency; but how far the Masters intended to contribute further, I can't say.

Com. Serj. I desire he may inform your lordships, whether he did not apprehend that the making up of this deficiency was a great concern to him?

Edwards. Yes, I think it hath been of a great concern to me.

Com. Serj. I desire to know then how it comes to pass that he enquired no more into it?

Edwards. My lords, I remember I was once asking some questions relating to that account, and it was told me, that the state of this deficiency had been laid before my Lord Chancellor before I was admitted. Upon that I did conclude, that this contribution of the Masters, of 500*l.* a-piece, had been in concert with my Lord Chancellor. I understood it to be so; I don't know whether my lord gave orders that it should be so.

Com. Serj. I desire he may be asked who it was that told him so?

Edwards. I think Mr. Hiccocks told me so.

Serj. *Probyn.* My lords, we have done.

Mr. Robins. I desire to know what answer Mr. Hiccocks gave to the question he asked?

Edwards. Only that my lord was acquainted with it, and had the state of Mr. Dormer's office laid before him.

Serj. *Pengelly.* My lords, if they have done, we only beg leave to observe, that they have been establishing the notice of this whole deficiency of the Earl, upon the first vacancy in

the office, even before Mr. Edwards came in; so that the whole transaction afterwards proceeded upon a full notice of the circumstances and state of the office. The evidence of the contribution of the Masters, and of the earl of Macclesfield, towards making good this deficiency, prevents, in a great measure, our bringing any proof to the Fifteenth Article, which is now going to be opened.

Mr. *Plummer*. My lords, if they have done, I only beg leave to observe, that the very letting Mr. Edwards pay his 5,000*l.* to the deficiency of the office, and my lord Macclesfield's not taking it to his own use, is a sufficient proof of his knowledge of the deficiency. And as to this composition, I have one question more to ask. I think he says he mentioned it to two or three Masters; I desire to know if he did so, and whether they approved it?

Edwards. I think one of the two or three Masters was Mr. Lightboun. He was there, and he did say, as I remember, that he thought we might as well lose the whole, as to take so small a part of such a debt.

Mr. *Plummer*. I desire another question, and that is, if he consulted any of Mr. Wilson's creditors before he made this composition?

Edwards. No, my lords, I did not know any of them.

Serj. *Pengelly*. How much did he receive in the whole from the Masters?

Edwards. I received 500*l.* from nine of them.

Serj. *Pengelly*. Did any of the Masters, and which, refuse?

Edwards. Yes, Mr. Lightboun refused.

Serj. *Pengelly*. For what reason?

Edwards. That I can't tell; he did not give any particular reason.

Com. Serj. My lords, I believe it may be necessary to trouble your lordships with asking another question: Whether this discourse, in relation to this composition, was before or after the composition was made?

Edwards. I believe it was before.

Com. Serj. Then I desire to know, whether Mr. Edwards, upon that or any other occasion, acquainted the noble earl of it?

Edwards. No; I don't remember I did.

Sol. Gen. My lords, I believe we have done with these two Articles.

Sir *John Rushout*. My lords, the Commons proceed to the Fifteenth Article against Thomas earl of Macclesfield, and they have entrusted me to lay open to your lordships the subject matter of this, and the two ensuing Articles, and the nature of the evidence they think proper to produce to make good the Charge in these Articles; by which it will appear to your lordships very fully, that the crimes charged upon the person at your bar, which have already been manifested in so many instances, did not proceed from mistake, or mere negligence; although these would have been faults not excusable in a person placed in so high a station, but that they were the effects of art and contrivance, formed to carry on and promote a corrupt and illegal gain and advantage to himself.

It may seem at first sight very surprizing, and may not readily obtain belief with your lordships, that a person raised by his majesty's abundant goodness to stations of so great honour and profit, who had received large additions to a plentiful income by successive and repeated grants from the royal bounty, that such a person should condescend to receive, much more that he should use arts and stratagems to obtain, further supplies to his insatiable thirst of lucre.

But this your lordships will plainly see to be the case, when we have given our proofs to the Fifteenth, Sixteenth, and Seventeenth Articles. Your lordships have already heard that there was a very great deficiency and loss of the suitors' money in the office of Mr. Dormer, a late Master in the Court of Chancery; that the Earl at your bar then presiding in that Court well knew that there was such a deficiency; that instead of applying remedies to redress the evil, he made use of several methods to cover and conceal it; it being very obvious for him to reflect, that, if such a deficiency was publicly known, and not effectually remedied, none would ever after purchase a Master in Chancery's place, at least not at such exorbitant prices to which the purchase had lately been raised.

What then must be done? Here was like to be an entire stop put to this branch of revenue which had yielded so plentifully, and proved so beneficial to his lordship.

The contrivance, therefore, is to oblige the Masters, who had already paid for their places, to pay again towards making good this deficiency, and by an artful drawing them to a compliance in this point, to conceal and continue the mischief.

This is what the Commons charge in the Fifteenth Article, that the earl of Macclesfield, to conceal the deficiency in Mr. Dormer's office, did order several Masters of the Court to bring in their accounts of the cash, effects, and securities belonging to the suitors which were in their hands, with intent to terrify the Masters thereby, so far, as to oblige them to contribute large sums to answer the demands of that office: and further, to engage them to a compliance in that respect, he represented to them, that unless they would do it, the money and effects of the suitors would be taken out of their hands: that by this means he did induce nine of the Masters to contribute 500*l.* a-piece, which several of them did, out of the suitors' money in their hands: and this being done, they were never obliged to bring in their accounts.

What answer is given to this Charge? The Answer hath been read, and I need not trouble your lordships with a recital of it. But the Earl admits that he gave such orders that the Masters should bring in their accounts:

That several Masters did afterwards pay and contribute as is charged;

That they were not afterwards obliged to bring in their accounts:

But then in excuse he alleges, That this was not done to terrify the Masters to make any contribution to the demands on Dormer's office:

That what they did contribute, he believes they paid freely, and out of their own money:

That he believes he followed therein a precedent of the like nature in the failure of Dr. Eddisbury:

That he continued to call for the accounts, but was convinced how tedious a work it would be, what obstruction it would give to the business of the Court; so he laid it aside: And observes, that what is lately done with respect to the accounts of the Masters, shews the insuperable difficulties of such an undertaking.

From this answer your lordships may reflect, how just the observation is that the Commons have made in their Replication, when they say, the earl of Macclesfield hath industriously avoided giving a direct and particular answer to several matters positively and certainly alleged against him, which from the nature of the facts themselves must necessarily lie in his own knowledge.

For he admits the fact charged upon him by the Article; but to that part of it which charges that this was done to conceal the deficiency in Dormer's office, he makes no answer at all.

And where the Article charges, that in order to obtain what is owned to be done, he did represent to the Masters, that unless they would comply, the money and effects of the suitors should be taken out of their hands; to this likewise he makes no answer:

My lords, it may be difficult for me, who am little conversant in law proceedings, to lay this matter in its strongest light before your lordships. But I take the case to be this.

The Commons charge, that the earl of Macclesfield, to conceal the deficiency in Dormer's office, ordered the Masters to bring before him their accounts of the suitors' effects, and threatened that unless they would contribute towards that deficiency, those effects should be taken out of their hands: they contribute, the matter is dropt, and no accounts are ever brought before him.

The Earl acknowledges that he ordered those accounts to be brought before him; that upon his giving that order several Masters contributed 500*l.* a-piece, and that afterwards the bringing the accounts was dropt; that this was done to conceal Dormer's deficiency, and procured by the menace of taking the effects of the suitors out of the hands of the Masters, cannot be denied: what part of the Charge then remains unadmitted? I must submit it to your lordships, whether, upon what the Earl hath allowed in express terms by his Answer, as well as what he hath admitted by not answering at all, the whole charge of this Article does not stand confessed, and the Commons might demand judgment against the Earl, upon this Article, on his own confession.

But the Earl adds some things by way of excuse, I suppose, or extenuation of the offence; how immaterially and how evasively your lordships will soon observe.

He denies, that the ordering the Masters to bring in their accounts, was done to terrify them to make any contribution towards Dormer's deficiency, and yet there is not the least appearance of any other end or design, for which it could be done; nor does he mention, or so much as pretend to any other end which, with the least colour of reason, could be intended by it; he says, indeed, he had a mind to know the state and condition of the several offices, that he might be able to make proper regulations concerning them; but the thing was dropt before he had this knowledge given him, and before he made one regulation in the matter; and yet he solemnly declares that this was his real and whole intention: if it was his intention, how came he to alter it so soon? Could it not last till one regulation was made in a matter which wanted it so much?

Your lordships will from hence judge, that the crime which the Commons charge upon the person at your bar was not a sin of ignorance; he was informed of the miscarriage of the officers of his Court, he was conscious that it needed regulation, he had some time a thought and intention to make such regulation; but, alas! it soon proved abortive, and the intended reformation, however necessary for the honour of the Court, as well as the safety and advantage of the subject, was soon laid aside: a conduct so weak and so greatly inconsistent, as not to be accounted for in any person, who had not been capable of pleading innocence and pardon to the same fact.

However his lordship having found it necessary to excuse this proceeding with the Masters, by pretending an intention to make some regulations concerning them; it became as necessary, in the next place, to make some apology for not proceeding to such regulations.

And for this, he says, that it would be a difficult and tedious work:

That it would be an obstruction to the business of the Court:

That what has been lately done shews the insuperable difficulties of the undertaking.

I may reasonably fear I should grow tedious to your lordships if I should attempt to take notice of all the inconsistencies, inconsequences and evasions in the Answer to this single Article.

Upon what account was the person now at your bar advanced to the highest station of the law; entrusted with the distribution of justice and equity in his majesty's supreme court in Westminster-hall, if it was not to secure the property of the subject to those to whom it did in conscience belong? And upon what account were the monies brought into Court deposited with the Masters, but only for safe custody, till it appeared to whom equity would determine the right?

But when it was once manifest that those,

who were employed in this trust, had shamefully broken it, and by notorious mismanagement were likely to bring ruin to all the suitors of the Court, was it fit to cherish and cover up the evil, because it was a difficult and tedious work to redress it? Was it likely to be less difficult by the delay, or rather did not every day propagate and increase the mischief, and make it less capable of remedy? Or could any thing be more proper for the business of the Court?

Your lordships have too much sagacity not to discern the weakness of such an excuse, nor will you easily be persuaded to believe, that the earl of Macclesfield was only going on in a path his predecessors trod before him, or that he is to be sheltered, because what hath been since done hath met with difficulties in the undertaking.

It is known how, upon the first failure, in the time of his predecessors, an effectual remedy was immediately applied: and that those who have since attempted to give an helping hand, have prevented any new eruption of the evil complained of; and if the undertaking was attended with difficulties, their care and commendable zeal for the public service have already been able to surmount them in some measure; although the gross encouragement given by the earl of Macclesfield had laid such a strong foundation for those difficulties, as if he had designed really to make them insuperable, that they might serve for such a sort of excuse as he now endeavours to draw from them.

But the Earl alleges further, that he believes the Masters, who contributed towards Dormer's deficiency, did it freely and out of their own money; and that in bringing them to contribute, he followed the precedent in Dr. Eddisbury's case.

I need not trouble your lordships long upon this branch of the Article, since no one besides his lordship can well believe the Masters contributed freely; and the proof we shall lay before your lordships upon this head will give full satisfaction, that none of them did it freely, nor all of them out of their own money; nor is it the crime the Commons charge, that the Masters were prevailed on to contribute towards the deficiency; but that the Earl, whose high station made it his duty, when he was informed of the deficiency, to take care to redress it, did not, as in the case of Dr. Eddisbury, provide that the whole money belonging to the suitors should be effectually answered; but instead of following that precedent in the just and honest use of it, he turned it to answer his own corrupt purposes, and to conceal from public notice, that loss to the suitors which it was his duty to have wholly prevented.

The next Article we proceed to is the Sixteenth, which charges, that one Elizabeth Chitty having obtained an order of the 17th of March, in the tenth year of his present majesty, whereby Mr. Edwards, who succeeded in Mr. Dormer's office, was ordered to pay 1,000*l.* part of a very large sum due to her, which had been paid into Dormer's hands; Mr. Edwards complained of this as an hardship to him, who had never received the money; upon this the Earl would have persuaded the rest of the Masters to pay the money to prevent a parliamentary enquiry, and they refusing, he paid it himself to one Mr. Lockman for the use of the said Mrs. Chitty; with intimations however, that she must not expect any more of the 10,000*l.* which had been paid on her account into Dormer's hands.

Your lordships will be surprized at the detection here made, both of the guilt and the boldness of the offender; that the person, who is so sensible of his crime, as to tell the Masters this matter would affect both himself and them, who discerns the monstrous consequences of the mischief before him, who foresees the punishment of that crime by a parliamentary enquiry; that this person, instead of applying remedies to the evil, should use little artifices only to conceal it.

What Answer gives the Earl to this Charge? He admits the order made, and that Mr. Edwards refused to pay the 1,000*l.* that he himself paid the money, and told Lockman that was all they must expect from him; but he does not believe he had any discourse with the Masters to persuade them to pay the 1,000*l.* to Lockman.

Your lordships must be convinced of the guilt, when the offender himself hath not the assurance to deny it; he cannot deny but that he knew and represented the consequences that would ensue what was done; that it would prodnce a parliamentary enquiry; that it would affect himself as well as the Masters, and that it would hazard the forfeiture of their offices. Your lordships have now an opportunity to vindicate the honour of parliaments, and to leave this instruction to posterity; that those who foresee their unwarrantable actions will give occasion for a parliamentary enquiry, shall not be able, by any contrivances, by any means whatever, to evade the justice of it.

As to the last part of this Article, which charges, that on a motion in a cause, Harper against Case and others, relating to 260*l.* which having been paid into Dormer's hands was in danger of being lost, the Earl falsely and deceitfully declared he had heard there was a deficiency in Dormer's office, but knew nothing of it only as public news: the Commons will give sufficient evidence to your lordships of the truth of this Charge.

The Earl indeed gives a large account of this cause and the orders made in it, and then concludes, he believes he expressed himself to this effect, that he had indeed heard of Dormer's deficiency, but that it had never come judicially before him upon complaint of any of the suitors of the Court: that several circumstances taken notice of at large had concurred thereto; and adds, that he said he did not know how all these things would come out, and expressed himself to that effect and no other; and upon all this circumlocution in the Answer, without any denial of the words as they stand charged, we have reason to believe your lordships would be

very well satisfied, without farther proof, that the words mentioned in the Article were undoubtedly used by the earl of Macclesfield.

It is further observed by the Earl, that this happened after such time as the Masters' accounts had been laid before the lords of the council, and had been under the examination of the judges and others to whom they had been referred by his majesty; and there may be some reason to doubt whether the knowledge of a deficiency had been so soon declared by his lordship, if the examination under which his majesty's abundant goodness and care for his people had put those accounts, had not already laid open, and made a public discovery of it.

The 17th Article charges, That though the earl of Macclesfield knew of the great deficiency in Dormer's office, yet to conceal it, in order to carry on his corrupt and unjust designs, he made orders upon Mr. Edwards for the payment of several sums, which were paid without regard to the proportion the rest of the suitors were justly entitled to out of Dormer's effects, and consequently to their great loss and prejudice: to this the Earl answers with his usual candour, that he never endeavoured to conceal the deficiency; but as he was under a full persuasion it would in due time be made good, that he did not think it incumbent on him, *ex-officio*, to make a declaration of an average; that he doth not know any order was made by him for Mr. Edwards to pay money lodged with Mr. Dormer; but believes several orders were made by the Court for that purpose.

Your lordships, upon the bare reciting the words of the Answer, will perceive the art and fallacy of the answerer; he doth not know any order was made by him, but believes several were made by the Court; as if he could hope to make your lordships believe, he was a stranger to, and unconcerned in the orders made by the Court of which he was the only judge.

He admits he did endeavour to conceal the deficiency, but was persuaded it would be made good in due time, without acquainting your lordships with any grounds for that persuasion, or even mentioning when he thought that due time would come.

He intimates it was incumbent to make a declaration of an average, but thought it not incumbent upon him to make it *ex-officio*: he could not deny it to be the most equal rule, that if a loss was not inevitable, an average ought to be made; that the loss might be borne equally and in proportion among all: he could not deny the making orders to pay some was inconsistent with, and destructive to this equality; and he could not however think it incumbent on him to do this *ex-officio*: and yet it belonged to nobody's office but his own to effect it.

Thus your lordships may observe how, to every Article, the Answer either admits the Charge, or uses loose, general, or foreign circumlocutions to evade it, when the evidence of the fact will not allow him to deny it; yet he would be thought to say something at least in excuse: but his knowledge of your lordships' superior understanding, ought to have deterred him from all expectations of imposing upon your lordships by any little shifts and artifices of this kind; nor should he hope to pass here the Answer as sufficient, which must have been reported contrary, if I am rightly informed of the practice, by any of the Masters of his Court.

But I shall not longer detain your lordships with observations in matters in themselves so evident; what is admitted to every one of these three Articles is sufficient to justify the Charge of the Commons, and whatever remains but imperfectly admitted, we doubt not, by witnesses and other proofs, to make out to your lordship's entire satisfaction.

My lords, it is a province enjoined me likewise, to maintain the Charge exhibited by the Commons of Great Britain, in the Fifteenth, Sixteenth, and Seventeenth Articles of their impeachment against Thomas earl of Macclesfield. And it is with the greater chearfulness I undertake that province, since I come to demand that justice, which your lordships are always disposed to administer, to every subject of Great Britain; and therefore I cannot but be fully assured of your just inclinations, to do equal right where it is demanded by the House of Commons, the representative body of the whole united kingdom.

It is very strange, that the Earl now under prosecution, who hath been so many years within the walls of this House; who hath so long been witness of your lordships' great integrity and wisdom, should not thereby be deterred from attempting what might subject him to your censure. But it is still more unaccountable, that a person, who hath had so long experience of that judgment and sagacity, whereby you skilfully distinguish between right and wrong, should hope, by the artifice of words, and loose, general, evasive expressions; that he should ever hope, I say, my lords, by such fig-leaves as these, to hide himself from the eyes of your lordships' impartial justice.

The worthy gentleman, who hath preceded me upon this head, hath so fully opened the several Articles now under consideration, and hath so clearly detected the sophistry and insufficiency of the answers that are given to them, that I shall not need to be long upon that head; it would indeed be difficult to add any thing new to what hath already been observed, did not the innumerable fallacies and inconsistencies with which his Answer abounds, continually supply fresh materials for observation.

But I shall content myself only to take notice upon the answer to the Fifteenth Article, that the Earl stands in a manner convicted by his own confession: He admits the fact, but would avoid the consequence, by saying, that

he really intended to make the Masters bring in their accounts, although he did not do it: If it was intended, why was it not done? It was a difficult and a tedious work.

I am surprised, my lords, to find that any person should expect to satisfy your lordships, by so weak and frivolous an excuse.

A person who presides in the highest court in Westminster-hall, is informed of some unwarrantable practices of the officers to whom the money of the suitors is entrusted, which, for want of due care, hath already proved very pernicious, and must in time prove destructive to the property of all the suitors of that Court, unless some speedy check be put to this growing evil; is convinced the matter needs regulation; but he lets it go on, because it would be a difficult and tedious work to redress it.

In moral evil, my lords, the continuation of the practice of an ill habit, because it is difficult to break it, is so far from extenuating, that it is justly esteemed to aggravate the fault; and I don't doubt but that your lordships will have the same sentiments in this case; for since it was necessary to apply a remedy, the sooner it was done the better, and the difficulty of the work should have been a spur, rather than a check to a vigorous endeavour for redressing it.

In his Answer to the Sixteenth Article, your lordships will observe the same prevarication spread through the whole: The widow Chitty having a considerable sum of money, to which she was entitled, brought into Court, and deposited in Mr. Dormer's hands for the safe custody of it only, petitions for 1,000*l.* part of her own money; such a petition could not be denied entirely, without bringing on a speedy enquiry of the causes and occasions of the embezzlement which had happened in that office; and the discovery must have brought on a necessity of remedying the evil that would thereby have been made so public, and so notorious.

An order therefore is granted, that the 1,000*l.* should be paid; but then the difficulty is renewed, how to make that payment without discovering to the public the mismanagement, which must have put a stop to the sale of the Masters' places, which were disposed of at exorbitant prices, and brought in an immense, though illegal gain. Mr. Edwards would not pay it; he had no money of Mr. Dormer's in his hands; the next application was made to the Masters of the Court, to see if they could be prevailed on once more to raise a sum by contribution amongst them; to this end they were told, that if they did not comply, Dormer's deficiency would be discovered; and that might occasion a parliamentary enquiry, the consequence of which might be, the forfeiture of their offices, bought contrary to the statute of Edward the 6th, that this might affect himself a little, but them much more; all this, my lords, is charged in this Article, and not denied by the Earl, but in such a lamentable, evasive manner, as betrays more guilt than an open and ingenuous confession.

It passes my observation, in that little view I have been able to make of past times, that any judge of a court in Westminster-hall, should own the knowledge of so great a crime in the officers of his Court, as that they came into their places contrary to law, without any censure, or blame for it.

But that a person raised by the unmerited bounty of his majesty, to preside in the highest court there, to conduct the administration of justice agreeable to the rules of equity and good conscience, as his majesty's vicegerent in that great station; that such a person should not only be conscious of the illegality of the Masters obtaining their places, and a party to such illegality, but should have the assurance to make use of that as an argument to extort money from them, in order to prevent the discovery, and the punishment consequent thereto, will, I persuade myself, stir up in your lordships the greatest indignation.

It seems he apprehended the terror of a prosecution by parliament might have some effect upon them, and engage them to comply with his demands, although it had not the least effect upon himself. It was a proper expedient to bring them into a contribution of 1,000*l.* but it was not sufficient to deter him from those practices, which justly merited such a prosecution.

Our ancestors thought it became them to keep in awe the greatest subjects in the realm, and none were too big to be called to account for the wrongs and injuries they did the public; the Case of Michael de la Pole * in Richard the 2nd's time, and cardinal Woolsey † in Henry the 8th's, with many others, some of which have been already mentioned to your lordships, are flagrant instances of it. And we have now a just opportunity of shewing, that we have the same regard for the honour of parliaments, and the good of the people; that no one ought to presume to transgress the laws, be his station, or his power, never so highly advanced, upon prospect of impunity; since a British parliament can reach the most lofty, and punish the most insolent, corrupt offender: so that he, who is not restrained within the limits and boundaries of the law out of awe and reverence to it, must expect to fall a sacrifice to the power of their justice.

Your lordships have here an instance of one placed at the head of the law, who is conscious that his actions are contrary to it; who makes no scruple of avowing this, where it may serve his interest, defies a parliamentary enquiry, and goes on in practices which he knows, and professes to be illegal. Your lordships will observe how he endeavours to shelter himself from danger, and by an infamous degree of dissimulation; what he openly avows, to raise a contribution from the Masters of the Court, he more publicly denies, with design to carry

* See his Case, vol. 1, p. 89.
† See his Case, vol. 1, p. 367.

a plausible appearance in this affair to the people.

The deficiency of Dormer at last became a public clamour; it was not Mrs. Chitty only, but many others wanted their money deposited and entrusted in the hands of the Court, and by the Court entrusted to the custody of the Masters; and the suitors then made open complaint upon this subject. In the cause therefore of Harper and Case, a motion being made, that 2607. lodged in Dormer's hands might be paid before the execution of the conveyance directed by the Court; he who had been so long informed of the shameful embezzlement of the money of the suitors in Dormer's office, who had invented so many artful contrivances to conceal the knowledge of it from the public, in order to serve his own private, unjust, corrupt designs, the matter being now declared in open court, he could no longer deny the knowledge of what he was so plainly informed of; that therefore all bye-standers might imagine his care and concern for the public good was so extraordinary, that he could not have forborn to have remedied the mischief if he had been before apprised of it; he then publicly and falsely declared that he had heard there was a deficiency in Dormer's office, but that he knew nothing of it but as public news. In the Earl's Answer, my lords, he explains this expression, by saying, that it never came judicially before him upon the complaint of any of the suitors of the Court: this I am persuaded your lordships will think a very poor excuse, that he who was the protector of all the fortunes of the fatherless and lunatics, should not, upon the first intimation, or even suspicion that they were like to be losers, cause a strict examination to be made into it.

It can scarce be believed a person who has so great a capacity to judge in what manner he ought to act, should ever descend to so low a degree, so unworthy the station in which he was placed, so unworthy the dignity and honour to which he had been advanced, as to deny the knowledge (otherwise than as news and accidental discourse) of what he had been so frequently informed of, and what he had taken pains so long, and so deliberately to conceal.

I need not use any words to represent to your lordships the indignity of such prevarication, who will, upon the first intimation, be sensible of every thing that may seem in the least degree to depart from the rules of honour: it is indeed almost inconceivable, that a person advanced to be a part of your noble body, should so far forget himself and you; it is what, if he could have expressly denied by his Answer, we must have despaired to have gained credit in, though we could have proved it by inferior witnesses; but his Answer will sufficiently convince your lordships of the truth of the allegation; for he who could not directly deny a charge of so gross a crime, must by his own silence, in a matter of so heavy a nature, be concluded to be guilty of it.

I have already detained your lordships so long upon this Sixteenth Article, that I shall not take the liberty of trying your patience by making any observations upon the Seventeenth, but shall leave it to the gentleman that is appointed to assist in it.

It contains only repeated instances of a corrupt endeavour, still to conceal the knowledge of that deficiency from the public, which it was his duty to have prevented; or at least to have supplied, and rather to have made it good, than have concealed it. What ground or reason could there possibly be, why a mischief of this kind, if it did happen by accident, should with so much industry be covered and continued, when that concealment could answer no good or honest purpose, but must by the delay increase and grow more desperate, and tend to bring destruction and ruin on the suitors of the Court?

But as your lordships, by the proofs upon the former Articles, had an opportunity to take notice what large sums of money had been paid for the purchase or exchange of the places of the Masters of the Court of Chancery; it is natural to conclude from thence, that the Masters were necessarily to be indulged in making use of the suitors' money in their hands, in order to make up the vast sums they had given for their offices; and if there had been miscarriages in attempts of that kind, (which in bold adventurers for such ends could hardly be avoided) the discovery of such a mischief would have made it absolutely necessary to have removed the money from those who had proved such unfaithful stewards, or at least to have obliged them to have given proper securities to indemnify those, whose fortunes were entrusted to their care, from any loss which might happen by their mismanagement; the consequence of which caution must unavoidably have drawn on a retrenchment of the exorbitant prices which of late have been given for those places.

But I need not give your lordships any further trouble, by enlarging more upon this topic, who ought rather to make apology for having been already so long upon it; the gentleman who went before me, and he that will follow me upon this head, will be sufficient to give your lordships more ample satisfaction; and the certainty of the facts (which the Earl himself seldom hath the assurance to deny, but only attempts by false colours to avoid the inferences from them) will, wherever there is need or occasion, be supported, and made good by full evidence.

Mr. *Thompson*. My lords, I am commanded by the Commons to assist in maintaining the Fifteenth, Sixteenth, and Seventeenth Articles of their Impeachment. The gentlemen who have gone before me, have acquitted me from giving your lordships any trouble upon two of these Articles; and I count it my good fortune that the third is fallen to my lot, since the evidence to prove the charge contained in it, is so

letter was read. I think he had spoken what he had principally to say before he came in; but I think he said the consequence might be fatal to the Masters, if we did not take care of this deficiency.

Serj. *Probyn.* We would not presume to interrupt the learned Managers; but I think the particular time when this was done, and the particular sums that were paid by each Master should be stated. I remember Mr. Edwards was pleased to say, the first 500*l.* that was contributed was paid upon the day he was sworn in, which I think was in May, 1721. We desire therefore that he would please to express the day when every other sum was paid in.

Sol. Gen. We only desire this gentleman to speak to his own payment.

Conway. The receipt is dated August 11, 1721. Then Mr. Edwards stopt so much money.

Serj. *Pengelly.* We desire he may be asked how he paid that money, whether volantarily, or freely, or upon what ground?

Com. Serj. I beg pardon, but I must beg leave that the witness may declare at what time this transaction was?

Conway. It was the day the receipt bears date, the transaction happened, August 11, 1721.

Sol. Gen. We desire he may be asked, what induced him to pay in this sum?

Conway. It was stopt as a contribution towards making up Mr. Dormer's deficiency.

Serj. *Probyn.* My lords, we desire that this witness may be asked, Whether there was any preceding promise or agreement to pay this money?

Conway. My receipt mentions a promise.

Serj. *Probyn.* Then I desire to know how long before this promise was made?

Conway. Soon after the deficiency was spoken of in Mr. Dormer's office, in February, 1720, about three weeks after I was admitted.

Mr. *Edwards* called.

Serj. *Pengelly.* My lords, we only call Mr. Edwards to ascertain the time when he received the money of Mr. Conway for his contribution.

Edwards. My lords, according as I have taken it out of my book, it was the 11th of August, 1721.

Serj. *Pengelly.* Now, my lords, we shall shew the manner how this payment was made.

Then Mr. *Lightboun* was called, and appeared.

Mr. *Plummer.* I desire Mr. Lightboun may be asked, if he was ever pressed to pay 500*l.* by whom, and for what?

Lightboun. Not long after Mr. Dormer's failure, Mr. Cottingham——

Com. Serj. My lords, I hope Mr. Lightboun shall mention the time as he goes along.

Lightboun. Not long after the failure of Mr. Dormer, I met Mr. Cottingham by accident at my Lord Chancellor's room at Westminster, and he asked me, whether there had been mentioned to me a proposal of paying or advancing 500*l.* a piece towards making up the deficiency of Mr. Dormer's office, for carrying on the business there? I said I had heard it; he said it was proposed that it should be immediately raised, that the business of the office might be carried on, till Mr. Dormer's effects could be disposed of and sold; and some intimation was given, that possibly we might have our money again as Dormer's effects came in. I have heard such a thing talked of, says I, but I will never come into it; I thought it attended with dangerous circumstances, and a dangerous precedent, and therefore I was resolved I would not contribute.

Mr. *Plummer.* Can you recollect what passed afterwards?

Lightboun. He said all the rest would. I said I would not; and I continued the same resolution when I talked with the Masters about it.

Mr. *Plummer.* I desire he may be asked, if my lord Macclesfield ever pressed him to pay this money, and when?

Lightboun. It was often mentioned to me by the Masters, why I did not contribute as the others did, and I was made not a little uneasy for not having done it. I think, in the beginning of the summer, 1722, as near as I can remember the time, my Lord Chancellor coming out of Court at his own house, (where I had the honour to have been sitting with him) said, Mr. Lightboun, I would speak with you. I followed his lordship into his house up into his study, where my lord was pleased to say, Mr. Lightboun, I am very sorry to hear that you have not contributed your 500*l.* towards making up Mr. Dormer's deficiency; for, says he, it must be considered, that it will be attended with ill consequences, if that matter is not taken care of. I asked him, Was it your lordship's proposal? He said it came from the two senior Masters, but he approved of it. I answered, That if it had come from his lordship it might have had a different consideration, but as it was theirs, and to serve their own purposes, I hoped his lordship would not insist upon my coming into it. The two senior Masters had been long in their offices, were grown in years, and were willing to get out, and sell at high prices; one of them had slipt out, and the other was about it: that I was but lately come into the office, and intended to continue in it, and said, I will not concern myself in this affair, unless the office can be put upon such a foot that the suitors may be made safe and easy.

Serj. *Pengelly.* My lords, I desire he may be asked, Whether at this time my lord Macclesfield made use of any reasons, arguments or promises towards prevailing upon him to pay this money?

Lightboun. I can't say my lord pressed me; he left me to my own inclination, but advised me to pay it, and not to stand out; to do as the rest did, and not to stand alone in it.

Serj. *Pengelly.* Whether did he mention of what consequence or advantage it would be to the Masters?

Lightboun. His lordship said, if there were not some measures taken it might be of ill consequence, and that this was the only expedient he thought of. I told his lordship I thought there were many others, but this was one I would not come into; but that it was not for me to presume to dictate to his lordship, I thought it did not become me.

Serj. *Pengelly.* My lords, I desire he may be asked, if after these discouragements my lord Macclesfield did not again demand money of him, and when?

Lightboun. My lords, in the year 1724, about the latter end of July, I met Mr. Cottingham by accident at the tavern. He came in and desired me to go into a room, for he had something to say to me. He told me, that my lord Macclesfield had sent him to tell me, that he wondered that I had not paid my 500*l.*; that there was 1,000*l.* to be paid to Mrs. Chitty, or to Mr. Lockman, that must be immediately paid; that my lord had been applied to, and much pressed, and it must be forthwith paid, and he expected that I would advance the 500*l.* and the rest of the Masters 50*l.* a-piece, which would make up the sum. I said to Mr. Cottingham, I cannot think my lord Macclesfield would send you on such an errand to me; I told my lord formerly I would not pay it, I was with his lordship this morning and he said nothing of it, and shall have the honour of waiting upon him in a day or two, and if he then think fit to talk to me about it I shall give him a proper answer; but I don't care to send my messages to him by you, because messages are liable to be mistaken and misrepresented, and I will give my answer myself. Upon that Mr. Cottingham began to be angry at my distrusting him, and thinking that he came of his own accord, and averred to me that he came with my Lord Chancellor's privity. I repeated the same answer again to him, that I would give my own answer to his lordship, and would return none by him. In a day or two after there was an intimation given, that my Lord Chancellor expected all the Masters to attend him at six o'clock in the evening: we imagined that it was a call upon the other Masters for more money, and for my 500*l.* They had all declared to me they would never contribute any thing more, and therefore I desired them that, in case that were the business, they would freely declare their thoughts before my lord himself. I believe it was the senior Master I pressed to do it, saying to him, It best becomes you to give the answer. Says he, If the question be put, I shall propose that we may have time to consider of it. I desired he would not do that, it would encourage my lord, and he might think that if he importuned it farther we would comply, and for my part I am determined not to do it; so we went on to my lord, and were carried up stairs; when we came there, my lord said, There hath been an application made to me on behalf of Mrs. Chitty or Mr. Lockman, I think he was the person expressly named, and that he had been much pressed by persons of distinction; and then he turned to me, and said Mr. Lightboun, I am extremely surprized you have not paid the 500*l.* as the rest have done. After he had used a good many persuasions and arguments, I told his lordship it was with great concern that I refused to do any thing that his lordship could desire of me; but this was a thing of such a dangerous consequence, that I would not contribute one farthing, and that I had given his lordship my reasons before; if he would hear them again, I would repeat them again; but this one was of most weight with me, that it might be a precedent, and looked upon as an undertaking for one another, if ever there should be a national enquiry into these matters; and that I would be answerable only for my own debts; that as I had not contributed towards the misfortunes of others, I would not contribute towards payment of their debts; that I did not know but the paying contributions to make good the demands on other offices might make deficiencies in our own; I had always refused it, and never repented it, and I had the pleasure of hearing every Master repent the doing it. I called upon the rest of the Masters to deal ingenuously with my lord, to tell him what they had said when they had talked over the matter among themselves, that they would not contribute any more; upon that Mr. Holford got up and said, He would never do it. Then my lord said, he either would pay it himself, or take care it should be paid.

Mr. *Plummer.* I desire he may be asked, if my lord Macclesfield used any insinuations with respect to the parliament?

Lightboun. I forgot that my lord Macclesfield was pleased to say, that the consequences of not contributing to raise a sum of money to pay the debt of Mr. Dormer, might be, that the money and securities would be taken out of our hands. I told him I was ready to deliver both the money and securities the next day, if his lordship made the proper orders, and I was properly indemnified. I think his lordship said further, this may produce a parliamentary enquiry, and should it be resolved that purchasing a Master's place is contrary to the statute of the fifth and sixth of Edward 6, you might lose your places; to that I replied, I would quit my office rather than hold it upon those terms of paying other Masters' debts. He went on farther about a parliamentary enquiry; I said, let the consequence be what it will, I would not pay it. Then I called upon the other Masters, who said they would not pay it.

Serj. *Probyn.* My lords, as to the paying of the 1,000*l.* to Mrs. Chitty or Mr. Lockman, I desire Mr. Lightboun may be asked, whether the late Lord Chancellor was pleased to say, that he had or would take care to pay the 1,000*l.* himself; or what the particular expression was that he then made use of, that he had taken care, or would take care?

Lightboun. I can't remember, at this distance of time, whether he said he had, or would take care to pay it. There is so little difference, that I cannot say which. I do not pretend to say those were the very expressions my lord used to me, or I to him. I speak as to the tenor or purport of our conversation; I would neither aggravate nor soften matters.

Serj. *Pengelly.* The next witness we call is Mr. Holford, who was present at this conversation.

Mr. *Holford* sworn.

Serj. *Pengelly.* We desire Mr. Holford, may be asked, whether he was present at this time, as is mentioned, when the Masters were required by the earl of Macclesfield to raise this 1,000*l.* for Mrs. Chitty or Mr. Lockman?

Holford. My lords, I was present at that meeting. It was desired, as I apprehended, by my lord Macclesfield, for us to attend him at six o'clock. When we came up there, I think, the first thing that my lord Macclesfield said was, he asked Mr. Lightboun why he would not pay his 500*l.* as others had done? Mr. Lightboun did give this answer: That he had told him several times before, that he would not do it; he had given his reasons, and it was in vain to repeat those reasons again, he was of the same mind still. My lord then spoke of a demand there was of 1,000*l.* on Mr. Dormer's office for one Mrs. Chitty and Mr. Lockman; and I apprehended my lord mentioned it as if he intended that the Masters should contribute towards making it up; but he after said he would take care of it. After that my lord did not mention the 1,000*l.* but, in general, spoke of the deficiency in Mr. Dormer's office, and it ought to be made up; and he proposed, as I did apprehend, that the Masters should make it up. Mr. Lightboun did call upon me to declare; upon that I told my lord it was very unadvisable to contribute towards a deficiency which nobody knew what it was; and the doing so would only be ruining one's self, for fear of being undone; and, for my part, I was unwilling to do it; any body else might do as they thought fit.

Mr. *Plummer.* In what manner did my lord address himself to Mr. Lightboun? Did he do it in gentle terms, or how?

Holford. He spoke pretty sharply to him.

Serj. *Pengelly.* What was said by the earl of Macclesfield, to persuade the Masters to come into this contribution?

Holford. My lord said it was a grievous thing there had not been that due care taken there ought to have been; that those who came first had all their money, and those that came after would have none; which would make a great clamour upon the Masters.

Serj. *Pengelly.* What was said upon that?

Holford. I don't remember what in particular.

Serj. *Pengelly.* What was said as to a parliamentary enquiry?

Holford. I remember my lord did say, it might perhaps occasion a parliamentary enquiry. Suppose, said he, the parliament should resolve, that the office of a Master in Chancery is a place relating to the execution of justice, and resolve that every body that hath purchased those offices is within the statute of the 5th and 6th of Edward 6. It may affect me in some degree, in the loss of the disposition of the offices; but it will affect you in the loss of the places themselves.

Serj. *Pengelly.* Whether any person then asked my lord, in what manner it might come before the parliament?

Holford. I asked my lord myself, and said it would be a favour if he would give us his opinion, in what manner it might come before the parliament, and in what way? He said, it might come in by the committee for courts of justice, appointed by the House of Commons at the beginning of every session. But when I came out of the room, I said, it was more likely to come by way of complaint than that way.

Serj. *Pengelly.* I desire he may be asked, whether, at this time, the Masters agreed to come to a contribution to pay this 1,000*l.* and what was said about it?

Holford. It was disagreed to; and when it was so, my lord did say, that he himself would pay the 1,000*l.*

Serj. *Pengelly.* We leave that as a circumstance of my lord's endeavouring to prevent a parliamentary enquiry.

Serj. *Probyn.* My lords, we desire Mr. Holford may be asked, whether he can be positive as to the time of this meeting?

Holford. I believe it was in July or August, 1724.

Serj. *Probyn.* You can't be positive.

Holford. No; I cannot be positive.

Serj. *Probyn.* Whether was there, at that time, any proposal made to raise money, by any annual sum or payment out of the offices, towards paying the deficiencies by degrees?

Holford. I do not remember any such thing.

Serj. *Probyn.* Was such a proposal made at any other time?

Holford. I don't remember that it was ever proposed by my lord. I have heard talk among the Masters of a great many schemes and proposals; but they never did agree in any one thing.

Serj. *Probyn.* I desire he may refresh his memory, and that he may inform your lordships if there was not a proposal made, that if they might be maintained in their offices, as they then were, they would not then consent that a contribution should be raised among the Masters.

Holford. No, I don't remember that; I believe it was mentioned, that supposing the Masters might be continued on the foot they were, whether they would not think it worth their while to do it? I said it was a matter fit to be considered, and I did not know but it might; but there was no method proposed but

what seemed difficult; and I don't remember that any thing was agreed to.

Mr. *Strange*. I desire he may be asked, whether, after they had contributed the 500*l*. a-piece, their accompts were called for by my lord Macclesfield in the manner they were called for before?

Holford. I don't know but they might. The manner of calling for those accompts was thus: there was a writing left in the public office, in which there was a great many items in what method those accompts should be brought in. I had prepared mine, and waited till they should be called for, but they were not called for nor demanded; so I laid mine by.

Com. Serj. I desire he may be asked, whether this discourse, in relation to the raising of money, was to pay off the whole deficiency, or confined to pay off this demand of 1,000*l*.

Holford. I don't remember any proposal, but only a discourse that was started. I did not apprehend the whole deficiency was intended to be paid; for I never knew any body that could tell what the whole deficiency was, till of late.

Com. Serj. I desire to know, whether he speaks this from his memory?

Holford. I can speak from nothing but my memory.

Com. Serj. I desire that he will inform your lordships, whether he doth not remember, that in November last there was a signification to the Masters, and to him in particular, to bring in their accompts?—*Holford*. Yes, my lords.

Com. Serj. If there was such an intimation in November last, to deliver in their accompts, how comes it that you say you have them by you still?

Holford. This is a mistake; you misapprehend me. The accompt, that I mentioned before, was what was immediately called for after the failure of Mr. Dormer; but the accompt in November last was what was called for by the judges, and delivered in to the council.

E. of *Macclesfield*. My lords, I desire to know whether Mr. Holford can remember what the particular directions as to those accompts were, and whether the accompts he prepared were drawn up according to those directions?

Holford. Those directions were many; in drawing up my accompt, I did not draw it up exactly according to those directions; but I drew them up to shew the balance of cash and securities in my hands.

E. of *Macclesfield*. I would desire to know, whether they were not the like directions as in November last, and whether the Masters did not think it impracticable to draw it up accordingly?

Holford. Yes, my lords, they did; they thought it difficult; I thought it was not practicable without a great deal of trouble.

Sir *George Oxenden*. I desire to know whether it was required by my Lord Chancellor to look into Dormer's deficiency, to see what the true state of it was at that time?

Holford. All I heard of it was: I heard that my lord had ordered Mr. Edwards to deliver in an accompt of Mr. Dormer's office to me and Mr. Bennet: he did deliver one; but it was an accompt done in haste, and did not shew what the deficiency was. For some of the payments said to be made, no proper vouchers were produced; there were mistakes, and it was not a proper accompt; and without examining it we could not depend on it.

Serj. *Pengelly*. He mentions, that at this meeting it was said, supposing the Masters might be continued on the same foot they then stood, &c. I desire Mr. Holford may explain what he meant by the foot they then stood on? What liberties and privileges were meant by that expression?

Holford. I understood it was their continuing in the possession of the money.

Serj. *Pengelly*. Whether that was to lock the money up in a cabinet, or to have power of the money to make use of it?

Holford. For my own part, I should not have locked it up.

Mr. *Lutwyche*. I would beg leave to ask him, as he hath mentioned the calling for the accompts, whether he delivered any accompt to the earl of Macclesfield, till the order made by the council?

Holford. My lords, I did deliver an accompt to my lord Macclesfield, or to Mr. Cottingham, of my money, but not of the securities.

Serj. *Pengelly*. We desire Mr. Edwards may be called again. [Accordingly Mr. Edwards was called, and appeared.]

Serj. *Pengelly*. My lords, we beg leave that Mr. Edwards may give your lordships an account (because he was immediately concerned in a demand made upon this office) what application was made to him for this Mrs. Chitty's money? And what application he made to the earl of Macclesfield on that occasion?

Edwards. My lords, there was an order brought to me, that was made by my lord Macclesfield, for the payment of 1,000*l*. to Mrs. Chitty. I told the party, I had not money in my hands of Mr. Dormer's sufficient to answer the demand upon the office. I then went to my lord Macclesfield. I told him (I had been forced to trouble him pretty often upon that occasion), that it gave me a great deal of uneasiness that there was no fund in my hands to answer those demands that were upon my office. I hoped his lordship would take care that there should be a supply, or that he would not be pleased to make orders upon me for the payment of money.

Serj. *Pengelly*. Give an account of the whole that passed, the whole conversation.

Edwards. My lord Macclesfield, in answer to that said (at least, it was what I understood by his answer), that if the people would but have a little patience, he was doing every thing necessary, and making proper regulations for that purpose.

Serj. *Pengelly*. I desire he may be asked, whether my lord Macclesfield at that time di-

rected him to proceed to make any farther payments, or encouraged him to go on to make payments?

Serj. *Probyn.* My lords, we apprehend that this is too leading a question.

Serj. *Pengelly.* What directions he had, in general?

Edwards. My lords, I had no directions that I remember.

Serj. *Pengelly.* I desire he may acquaint your lordships, whether he said any thing relating to the state and condition of the suitors of the Court?

Edwards. Several times that I had the honour to wait on my lord Macclesfield, I told him there was like to be a great deficiency in Mr. Dormer's effects: all that had been raised out of Dormer's effects was exhausted and gone, and there were a great many demands; and I hoped provision would be made to answer them: it was not for me to do it else; and I hoped it was not expected that I should.

Serj. *Pengelly.* Was any thing represented at that time, concerning paying some of the suitors of the Court, and not others?

Edwards. About that time, or rather since, as I remember, I told my lord Macclesfield that I saw the Masters were determined not to make any farther contributions; and if that were to be the case, and that there was to be no farther supply of money, it would be very hard for some to have all their money, and others none at all. My Lord Chancellor said, I do not know what to say to it; I think it is very hard it should be so; I will take all the care I can, and hope to make every body easy.

Mr. *Lutwyche.* My lords, I desire he may be asked, whether he had not paid all the money, or near all, when this discourse happened?

Edwards. Yes, my lords.

Mr. *Lutwyche.* I desire he may be asked, whether he was present at the meeting of the Masters, when this 1,000*l.* was insisted upon, and on what occasion it was?

Edwards. It was upon a summons that all the Masters should attend his lordship; I am not sure as to the day; I think it was the latter end of July: we waited upon his lordship about six o'clock in the evening, and my lord mentioned it to Mr. Lightboun, that he was surprized that he had not contributed his 500*l.* he wondered that he should be so backward in doing what others thought right to do, and that there was occasion at that time for the payment of 1,000*l.* he mentioned, either to Mrs. Chitty or Mr. Lockman. Mr. Lightboun told him, that he did not expect to be asked again upon this subject, he had so often told his lordship he would not contribute; other people might do what they pleased, but as for his part he was determined not to do it.

Mr. *Lutwyche.* We desire to know what passed, and what was said by the Earl at that meeting?

Edwards. When this was refused by Mr. Lightboun, there was a discourse in the company, that if the rest of the Masters would advance 50*l.* a-piece, and Mr. Lightboun his 500*l.* it would make up the sum. The Masters, most of them, spoke their mind, and shewed an unwillingness to contribute any more. My lord Macclesfield was pleased to say, this is a thing of consequence, a matter that ought to be considered; here is a very pressing occasion for a sum of money to be immediately paid; if not paid, I don't know what the consequence may be: clamours begin to grow pretty strong, I don't know but it may occasion a parliamentary enquiry; or to that effect.

Mr. *Lutwyche.* I desire he may be asked, whether there was any further discourse what the parliament might do.

Edwards. My lord Macclesfield was pleased to say farther, I don't know, if this matter comes into the consideration of parliament, how far it may affect your offices, the sale of them is against an act of parliament: suppose it should be resolved by the House, that these places, being bought contrary to the act of parliament, are forfeited, I can't say how far it may affect me in some measure, but it will affect you much more.

Serj. *Pengelly.* These are the very words of the Article, and we may rely upon the opinion of the Earl himself, when he was in the possession of that great office?

E. of *Macclesfield.* My lords, I desire Mr. Edwards may be asked, whether the subject matter of this discourse was the payment of this 1,000*l.* or making good the whole of Dormer's deficiency?

Edwards. I understood the only subject to be this 1,000*l.*

E. of *Macclesfield.* You understood it so?

Edwards. And the reason why I understood it so, was, because if Mr. Lightboun would have been pleased to have paid his 500*l.* and the other Masters 50*l.* a-piece, it would have made up the sum.

E. of *Macclesfield.* Was the proposal of paying 50*l.* a-piece, after Mr. Lightboun had refused the payment of 500*l.*?

Edwards. I believe it was.

E. of *Macclesfield.* What occasion was there for the proposal to pay 50*l.* a-piece, when the payment of 500*l.* was absolutely refused?

Edwards. I believe it was understood by several, that, if the other Masters would have contributed 50*l.* a-piece, it would have been an inducement for Mr. Lightboun to have come in and paid his 500*l.*

E. of *Macclesfield.* Somebody must propose this that had that apprehension.

Edwards. I can't say who proposed it, nor whether it was proposed by my lord Macclesfield; but 50*l.* a-piece was mentioned.

E. of *Macclesfield.* My lords, I desire to know of Mr. Edwards, whether the Masters did not at any time agree to make good Dormer's deficiency?

Edwards. My lords, I think I remember a meeting of the Masters at his lordship's house not long before this, where they seemed inclinable to agree, that if they were continued in the

rights of their office in all respects, and on the same foot as they had enjoyed them, that then they would have endeavoured to have made this deficiency good.

E. of *Macclesfield.* I desire to know if he hath not said, that on his coming into the office, the Masters told him they would make good the deficiency?

Edwards. I can't say the Masters ever told me they would make good the deficiency; I can't say I ever heard them say that they would make it up.

E. of *Macclesfield.* I desire you would recollect yourself, whether, when you were with me, and I desired you to give an account of this matter, you did not say, that the Masters did promise to make it good, or else you would not have come into the office?

Edwards. I don't remember I told your lordship so; I believe it was designed by the Masters to have made it up; if not the whole, the greatest part of the Masters, were inclinable to make up the deficiency.

E. of *Macclesfield.* I desire an answer to the question, whether he did not say, that the Masters did promise him to make good the deficiency?

Edwards. I don't remember that I said so directly; I told your lordship, that unless I had had assurances that the deficiency of the office would have been made up, I never would have meddled with it. These assurances I had from Mr. Cottingham and Mr. Godfrey.

E. of *Macclesfield.* I think you say, the Masters did seem to agree, that if they were kept in possession of the rights of their offices, they would contribute. Had you two meetings with me in July, or August?

Edwards. I think there were two in the same month of July: within a month the two meetings were.

E. of *Macclesfield.* Whether the Masters have not made several complaints to me, of the invasion of their right in their offices, and desired me to make an order to redress them?

Edwards. Not only complaints of that sort were made, but I believe those complaints were reduced into writing, and laid before your lordship; there were frequent complaints by concurrence of all the Masters.

E. of *Macclesfield.* How long before that time were complaints made to me of the Masters being injured in the profits of their office?

Edwards. I believe near a twelvemonth.

E. of *Macclesfield.* Was it not more?

Edwards. It was a full year.

[Earl of Macclesfield shews Mr. Edwards a paper.]

Edwards. This is what I mentioned, a representation in writing laid before your lordship.

E. of *Macclesfield.* Pray look upon that.

[Shews another paper, which Mr. Edwards looks upon.]

E. of *Macclesfield.* Are those two papers signed by you, and the other Masters whose names are at the end of them?

Edwards. Yes.

E. of *Macclesfield.* I desire to know, in the next place, whether I was not much pressed by the Masters to have made some alterations in the proceedings of the Court? And what answer did I give?

Edwards. Upon this representation there were a great many applications made to my lord Macclesfield. I went several times myself. Sometimes two or three would make application to him, that he would be pleased, if he thought the matters represented to be grievances, that he would redress them. My lord did say, that he thought that the matter of our complaint was just, and that those matters were proper to be rectified, and he would take all proper measures to do it.

E. of *Macclesfield.* And why were not all these things set right?

Edwards. I remember one circumstance that I believe will be an answer to the noble lord's question. Those matters were not laid together all at once before my Lord Chancellor, but some at one time, and others at another time; and my lord Macclesfield did say, I would have you draw up a state of all these grievances you complain of, and then I shall see them better under one view, and take them together.

E. of *Macclesfield.* Was there any order made in favour of the Masters, and to redress these grievances?

Edwards. I remember we were a little impatient that there was no order made; we often solicited on several accounts before they were made.

E. of *Macclesfield.* For what particular reasons were you so impatient?

Edwards. It is impossible to recollect the particular reasons; they were, in many instances, relating to the proceedings at the Rolls, and the innovations there to the prejudice of the Masters' offices.

Mr. *Plummer.* My lord Macclesfield hath asked several questions, and I would make an observation upon this evidence, that these gentlemen applied to lord Macclesfield to redress grievances, but he would not promise them a redress till they paid this debt.

Sir *George Oxenden.* I desire to know what he means by the profits of the office?

Edwards. The principal thing that I mean is the keeping of the money; but there were several other things in which we thought our offices lessened, by taking away the customary fees which usually belonged to the Masters.

Sir *George Oxenden.* If the profits of the office was the keeping of the money, I suppose they made use of it?

Edwards. Yes, my lords, I believe it was not understood by any body, that the money was to be locked up. By the profits of the money is meant the putting out the money at interest for ourselves. But that is not all, the placing the same out at interest for the suitors occasions

several perquisites, as reports and other things, which would be lost by taking away the money.

Mr. *John Bennet* called again.

Sol. Gen. My lords, we desire Mr. John Bennet may be asked, whether he was present at the meeting at the Lord Chancellor's, when proposals were made for the raising this 1,000*l.*

J. Bennet. My lords, I was there, and my lord Macclesfield was earnest in persuading Mr. Lightboun to pay his 500*l.* Mr. Lightboun said he had much rather bring in all the money and securities he had in his hands, and deliver them up, than pay this 500*l.* Upon which my lord Macclesfield said, delivering up the money and securities too might be the consequence, but that was not the worst; there might be votes of the House of Commons, that the office of a Master in Chancery did concern the execution of justice, and that the Masters in Chancery, by purchasing their offices, had incurred the penalty of the statute of Edward the 6th, and thereby forfeited their places, and that a new set of Masters might be put in; it might redound to some loss to his lordship in disposing of those offices, but it would redound much more to their loss, the loss of their places.

Mr. *Lutwyche.* When the Masters refused to contribute to this of Chitty, what said my lord?

J. Bennet. My lord said, he would take care of it himself, or that he would pay it himself, I can't say which.

Mr. *Lutwyche.* Whether any thing was said concerning the consequence of not paying this 1,000*l.* and whether any mention was made of Dormer's deficiency?

J. Bennet. There was mention made of Mr. Dormer's deficiency, and one Master mentioned, that it was a bottomless pit; and as my lord had desired me and Mr. Holford to take some account of it, we both declared, we had not received such a satisfactory account from Mr. Edwards as could be depended upon, and that the deficiency appeared to us to be very uncertain.

Mr. *Lutwyche.* I desire he may be asked, whether any mention was made of any fear of the discovery of that deficiency?

J. Bennet. I can't say by whom it was said, but it was said in discourse, if this 1,000*l.* was not now paid, the deficiency of Mr. Dormer's office would be discovered.

Mr. *Lutwyche.* Pray, recollect whom was that said by?

J. Bennet. I can't take upon me to say whom it was said by, but it was said in the conversation that passed at that time.

Mr. *Lutwyche.* And who were then present?

J. Bennet. I believe, all the Masters.

Mr. *Lutwyche.* And who besides?

J. Bennet. My lord Macclesfield.

Mr. *Lutwyche.* Were not all the Masters against making up the deficiency?

J. Bennet. Yes, all of them.

E. of *Macclesfield.* Was Dormer's deficiency then known?

J. Bennet. It was known abroad, but it was not known how much.

E. of *Macclesfield.* Were there two meetings between me and the Masters in July, or the beginning of August?

J. Bennet. I believe within a month there were two meetings.

E. of *Macclesfield.* What was the subject matter of the other meeting?

J. Bennet. The first meeting was to put us all in mind of our duty, and to admonish us to avoid any complaint.

E. of *Macclesfield.* That was the first meeting; was there any thing said about Dormer's deficiency.

J. Bennet. I don't remember there was.

E. of *Macclesfield.* What admonition was it that was given to the Masters, and what was said to them, if they did fail in their duty?

J. Bennet. The admonition was generally to take care to perform our duty, not to give any cause of complaint, and, in particular, not to go out of town, till a week after the last seal.

E. of *Macclesfield.* Do you not remember, that I said in my admonition, that if any Master failed in his duty, I owed it to the rest to punish him, and to make him an example?

J. Bennet. I believe you did say so.

Mr. *Lutwyche.* At the time when this admonition was given, was any thing then said about your accounts?

J. Bennet. No, I don't remember that any thing was then said on that subject.

E. of *Macclesfield.* In point of regularity, when these gentlemen speak of this 1,000*l.* they should produce the order.

Serj. *Pengelly,* It is here, and it is admitted in the Answer.

[The Order produced, proved by Mr. Ralph Paxton, who swore it to be a true copy of the Order taken from the Report-office.]

[Mr. *Paxton* begins to read.]

"Martis decimo septimo die Martii Anno Regni Georgii Regis decimo, inter Prideaux Sutton Cler. et Annam Uxorem ejus, Mercy Sheldon Spinster et Egidium Laurence Executor. Winifred Sheldon Spinster Defunct. Quer. Elisam Chitty, Johannem Russel et alios Defendentes.

"Whereas the defendant, Eliz. Chitty—

E. of *Macclesfield.* It is not necessary to trouble my lords in hearing the whole order, only the ordering part.

[Mr. *Paxton* reads again.]

'His lordship doth order, that the said Master do, out of the said money in his hands, pay 'unto the defendant Elizabeth Chitty the sum 'of 1,000*l.*, and to the plaintiffs the sum of '500*l.*, subject to the further order of this 'Court.'

Mr. *Lovibond* sworn.

Mr. *Lutwyche.* My lords, we desire, that Mr. Lovibond may be asked, whether he was at the

meeting when the Masters attended my lord Macclesfield about July last, and what passed at that meeting?

Lovibond. I was at that meeting with several of the other Masters, I think most of them: as to what passed then, according to the best of my recollection, the first thing was, my lord Macclesfield turned to Mr. Lightboun and asked him, Why he had not paid the 500*l.* as well as the rest of the Masters; to which he replied, He never would; and gave my lord some reasons why he would not. Then my lord Macclesfield was pleased to say, there was a matter that required expedition, a further demand was made of a sum of money, by one Mr. Lockman, who belonged to the Prince's court, and it did behove us to find out some way to make him easy. He proposed that the Masters should raise that money among them. The Masters in general said, that they could not do it.

Mr. *Lutwyche.* What arguments were made use of by my lord Macclesfield to persuade them to it?

Lovibond. I remember that Mr. Lightboun said, rather than pay it, he would deliver up all the money and effects in his hands; and my lord Macclesfield did reply, Perhaps that is not the worst of the matter, it may be worse than that; suppose there should be a parliamentary enquiry, and the parliament should come to a resolution, that you have forfeited your offices, by having bought them against the statute of Edward the 6th.

Mr. *Lutwyche.* I desire he may be asked, whether any encouragement was given, in case they would pay this money?

Lovibond. I don't remember there was any thing spoke, by way of encouragement to the Masters, for payment of that sum of money.

Mr. *Lutwyche.* I desire to know what was the result of this matter, as to this sum of money being to be paid, and who it was that said it should be paid?

Lovibond. Upon the refusal of the Masters, my lord Macclesfield said, Well, I will take care of that part myself.

Mr. *Lutwyche.* I desire he may be asked, whether any thing was then said in relation to the deficiency of Dormer's office?

Lovibond. Yes, there was some discourse about that matter, and my lord Macclesfield did express himself as though it would be an unlucky thing, and it must be made up one way or other, and he desired the Masters to think of a way to make it up. My lord Macclesfield said, if you can have the enjoyment of your places, as you have had them these forty years, will you come into some terms to make up that debt? Some said they could not come into it; some said there might be a means of paying it by annual instalments out of their several offices, some seemed to agree to it; others said we may as well make good the bankers' debts, as make good this debt.

E. of *Macclesfield.* I desire he may be asked, whether he did not agree, that this deficiency should be made good by annual payments?

Lovibond. No, I did not.

E. of *Macclesfield.* I desire to know, whether the rest of the Masters did not?

Lovibond. I believe some of the Masters did.

E. of *Macclesfield.* I desire to know, whether they did all agree?

Lovibond. I believe the major part did. I did not.

E. of *Macclesfield.* Do you believe any besides yourself disagreed?

Lovibond. Indeed I can't tell. The greatest part did agree. I can't say I heard any body refuse.

E. of *Macclesfield.* Some he says, did agree to it, the major part, and none that he heard refused. I desire to know, if it was not endeavoured to find out a way to make up whatever deficiency there was; and whether this was the subject matter, the making good the 1,000*l.* or the whole of the debt?

Lovibond. The making good the whole of the debt, as I understood it.

E. of *Macclesfield.* I think he said, that I said then, I would take care of the 1,000*l.* Whether was that after they had agreed that the deficiency should be made good, or before?—*Lovibond.* No, I think it was before.

Mr. *Plummer.* I desire to know, if my lord Macclesfield did say, he would take care of it, when the Masters refused to contribute?

Lovibond. To the best of my remembrance, it was upon their refusal that he said so.

Mr. *Thomas Bennet* called again.

Tho. Bennet. My lords, before the Managers propose a question, I beg the favour to mention a thing that my memory slipped me in yesterday. My lord Macclesfield then asked me, what estate I had purchased? I said 68*l.* a-year in Kent, and 40*l.* per annum in Suffolk. I forgot a house I bought for 700*l.* which is mortgaged for the same sum. The account lies upon the table, I forgot it then, and I did then refer to my account that lies upon the table, that I might not be mistaken.

Sol. Gen. I desire he may be asked, whether he was present at this meeting at my lord Macclesfield's?

Tho. Bennet. Yes, I was summoned to attend my lord Macclesfield on this occasion. I dined that day with my brother and Mr. Lovibond and one more; and my brother told me, that there was a proposal come from my lord Macclesfield by Mr. Cottingham. He said it was, that the Masters should advance 50*l.* a-piece, towards a demand in the Court of Chancery; and in case we would do it, my lord Macclesfield would make Mr. Lightboun pay his 500*l.* We, who were then present, seemed to agree, that if my lord would make Mr. Lightboun pay his 500*l.* we would pay our 50*l.* a-piece. In the evening, when we attended my lord Macclesfield, his first application was to Mr. Lightboun, and as soon as we came, he said to him, Mr. Lightboun, I am surprised you have not

paid your 500*l.* as the rest have done, I wonder at it; and he used some hard expressions, that I wonder he could stand it, I could hardly have done it; but Mr. Lightboun did stand it, and refused to pay it, and gave his reasons for it, and said he had given them over and over again.

Sol. Gen. What reasons were laid before you to pay it?

Tho. Bennet. The reasons laid before us by my lord Macclesfield were, that there was a deficiency in Dormer's office, which he was afraid would break out; for here was a demand of a sum of money by one, for whom he had been spoken to by a person of very great distinction. I did not know who it was then, but I afterwards understood it was Mr. Lockman, that was the person that was to have the money; and he asked, if we did not think it for our interest to make such a person our friend?

Sol. Gen. Was there any thing more said?

Tho. Bennet. My lord Macclesfield said that in case this money was not paid, and some method found to make up the deficiency of Mr. Dormer, he believed it might occasion a parliamentary enquiry, which might hurt him very much; but, said he, I believe it will hurt you, gentlemen, much more.

Mr. *Lutwyche.* Were there any of the Masters that asked him any questions, how he apprehended it would come into parliament?

Tho. Bennet. Yes, Mr. Holford asked him the question, Can your lordship imagine in what method this may come into parliament? My lord answered, Upon the meeting of every parliament, committees were chosen by the House of Commons, and among the rest there was a committee of the courts of justice, and he thought it very likely, that that committee might take this under consideration.

Sol. Gen. What was said upon the Masters' refusal to raise the 1,000*l.*?

Tho. Bennet. After Mr. Lightboun refused to pay towards the 1,000*l.* my lord then said he would make up that.

Sol. Gen. Was there any talk of Dormer's deficiency?

Tho. Bennet. There was some discourse about making up Mr. Dormer's deficiency. Several of the Masters were against it. No scheme could be found that would make it up. I said upon that occasion, that it was a bottomless pit, and Mr. Edwards had not given satisfaction to any of the Masters what the deficiency was.

Sir *George Oxenden.* Was there any mention made at this meeting of the statute of Edward 6?

Tho. Bennet. My Lord Chancellor said, he did not know but our offices might come within the statute of Edward 6: and, if that should be so resolved by parliament, we must forfeit our offices; and therefore had we not better do something than forfeit our offices?

Serj. *Pengelly.* My lords, we beg leave to call Mr. Lockman, to whom this 1,000*l.* was paid, and to shew your lordships the declaration that was made by the earl of Macclesfield at that time.

Mr. *Lutwyche.* We beg leave first to read the order in the cause of Harper and Case.

[The Order is proved.

[Mr. *Ralph Paxton* reads.]

"Sabbati quinto die Decembris, Anno Regni Georgii Regis undecimo, inter Jana' Harper vidua' Quer' Thoma' Case Clericu' et Sara' Maria' uxor' ejus, Henricu' Halsey, et alios Defendentes.

"Upon opening of the matter this present day unto the right hon. the Lord High Chancellor of Great Britain, by Mr. Solicitor General and Mr. Williams, being of counsel for the plaintiff; and Mr. Benjamin Jackman, in the presence of Mr. Talbott, of counsel for the defendants, the Cases. It was alleged, That it being, by the order made on the hearing of this cause (*inter alia*) ordered and decreed, That the sum of 500*l.*, part of the marriage portion of the plaintiff, received by Thomas Harper, clerk, her late husband, should be made good to her with interest from his death, at the rate of 5*l.* per cent. per annum, together with her costs of this suit, to be taxed by Dormer, then one of the Masters of this Court, out of the said Thomas Harper's estate (for which, and other purposes in the said order, so much as should be necessary of the said Thomas Harper's estate was to be sold to the best purchaser that could be got for the same, with the approbation of the said Master:) and the said Master having, by his report, (made pursuant to the said order, and) dated the 12th of December, 1716, certified the sum of 557*l.* 16*s.* 5*d.* to be due to the plaintiff for principal and interest, besides costs. And the said defendants having been served with a writ of execution of the said decree, the said Master, by his report dated the 9th of November, 1717, allowed the said Jackman the purchase of three houses at Kensington (part of the premises directed to be sold) at the sum of 260*l.* And the said Master's report being afterwards absolutely confirmed, the said Jackman obtained an order of the 19th of December, 1717, whereby it was ordered, That the writings belonging to the said estate, purchased by the said Jackman, should be delivered to his counsel, and that the tenants of the said estate should attorn to him, on bringing his purchase money before the said Master. And the said Jackman did accordingly, on the 24th of the same December, bring his said purchase money before the said Master, as by his certificate of that date, now read, appears, and the tenants attorned to the said Jackman: but the defendants have ever since, by trifling pretences and excuses, put off the executing proper conveyances to the said Jackman. Although the same have been long since settled and allowed by Mr. Edwards, one of the Masters of this Court, the said Mr. Dormer's successor, as by the affidavits of Joseph Herring and Thomas Atwood ap-

pears. It was therefore prayed, that all parties may forthwith execute conveyances of the said houses to the said Mr. Jackman, or as he shall appoint: and it was on the plaintiff's behalf prayed, that the said purchase money may be paid to her, towards the satisfaction of what is due to her, by virtue of the said decree: Whereto the counsel for the defendants, Cases, alleged, that they are entitled to the residue of the said Thomas Harper's estate, after such payments as are directed by the said decree to be made out of the same, are made, and the defendants Case and his wife were always ready to join in executing the said conveyances, upon an application being made of the said Jackman's purchase money towards what is due to the plaintiff; but being apprehensive of a deficiency of Mr. Dormer's estate to answer the monies brought before him, pursuant to the orders of this Court; and conceiving they ought not to be sufferers, though such deficiency might appear, and the delay being occasioned by the purchaser, and not by the plaintiff, and the said Master not having settled the said conveyances, they did therefore scruple to execute the said conveyances, until the said Jackman's purchase money should be applied to the purposes in the said decree; but are willing, if the Court should think proper, on payment of the said 260*l.* purchase money to the plaintiff, and the said Thomas Harper's estate being discharged of so much, to execute the said conveyances. Whereupon, and upon hearing of the said affidavits of the said Joseph Herring and Thomas Atwood, and an affidavit of notice to the defendant Halsey read, and what was alleged on both sides; his lordship doth order, that it be referred to the said Mr. Edwards, to examine, whether the said 260*l.* was deposited with the said Mr. Dormer for the benefit of any particular person, and whom, and what was the occasion of the delay, that the said conveyances were not executed, and the said 260*l.* purchase money paid out before the year 1720, and whether there is likely to be a loss of any monies deposited with the said Mr. Dormer? And, upon the said Master's report, such further orders shall be made as shall be just."

Serj. *Pengelly.* My lords, this order was made in December last: it is a direction to Mr. Edwards to see, whether there was like to be any loss of any monies deposited with Mr. Dormer: we pray that Mr. Lockman may be sworn.

Mr. *Lockman* sworn.

Serj. *Pengelly.* We beg leave that Mr. Lockman may be asked, Whether he attended upon the earl of Macclesfield at any time relating to a sum of money, and where?

Lockman. I received an order from the earl of Macclesfield upon Mr. Edwards for 1,000*l.* but not being able to receive it of Mr. Edwards, I went to Kensington to wait upon the earl of Macclesfield, and told his lordship the necessity I had for this 1,000*l.* which belonged to Mrs. Chitty, but the benefit of it was made over to me; that I had the misfortune to be backwards in my affairs, and had some South Sea contracts to make up, and had made a composition of my debts, for which I had about three weeks to pay it in, and therefore I desired the favour of his lordship to order me the payment of this 1,000*l.* His lordship was pleased to tell me, that if I attended him in town, and applied to him there, I should have the money paid. Upon which I waited upon his lordship in town: and when I had the honour to see his lordship, he told me, That he had enquired into the affair relating to that money upon which the order was made; that it was in Mr. Dormer's office, where there was a deficiency; that he could not yet bring all the Masters to settle that matter; but if I could come a few days after, he would see what he could do for me. Thereupon I attended several days, and went to Westminster-hall, and spoke to Mr. Cottingham, and he said great pains had been taken by my lord, but he had not yet been able to bring any thing to bear, but he did not doubt but in a little time he could bring it to bear to his satisfaction; there had been some motions made by serjeant Cheshire, &c. which had frightened the Masters from raising money; but if I attended in a few days, he would do what he could for me. I waited some days, and at last I took the freedom to wait upon my lord Macclesfield at his own house in Lincoln's-inn-fields, and I told his lordship I had attended many days in town, and had neglected my duty and service; that the next day was the last day appointed to pay my composition, and having depended upon this money, I had made no other provision. Whereupon his lordship said he had taken a great deal of pains, and had spoken to the Masters, and that I should attend his lordship next day at Westminster at ten, and he would see what he could do for me; but that there was none of the estate of Mr. Dormer left. I waited upon his lordship accordingly the next day at Westminster. His lordship called me into his room, and told me that Mr. Cottingham should pay me the 1,000*l.* but he believed there would come no more, that this would be the last of the money, or the last sum that Mrs. Chitty would receive; and that if she had nothing else, I might, by marrying her, in expectation of a fortune, make myself worse than I was.

Mr. *Dodington.* I desire Mr. Lockman may be asked, What the whole sum was that was paid in?

Lockman. I took it to be about 10,000*l.*

Serj. *Pengelly.* I desire he may be asked, If the earl of Macclesfield gave any farther reasons why it was like to be the last sum?

Lockman. The earl of Macclesfield did not at that time give me any reason; but the day before, when I had the honour of seeing his lordship, at his house in Lincoln's-inn-fields, and once before that, his lordship told me that the Masters in Chancery were apprehensive of losing a great deal of their privileges, and pro-

fits of their places; and therefore some of them were not willing to advance any money.

Mr. West. My lords, I beg leave to ask Mr. Lockman, whether he received any direction or intimation as to the keeping of this private, the telling, or not telling it?

Lockman. I did receive no intimation at that time; afterwards, when the solicitor met me, he asked me, Pray, says he, Mr. Lockman, have you received the 1,000*l.* you solicited for? Yes, I have received it. Pray, who then paid it you? I told him Mr. Cottingham; says he, Mr. Cottingham denied it to me. Upon that I met Mr. Cottingham some time afterwards in the Court of Requests. He told me I should say nothing of it: besides this, I received no intimation to keep it secret.

Mr. West. What did he say to you then?

Lockman. He said at first meeting me, You can't fare well, but you must cry out roast-meat. I, being not well acquainted with that phrase, did not know what he meant. I did not know that I had ever eat roast-meat or boiled-meat with him either; so I told him, if that was in relation to his paying me the 1,000*l.* it was only what was due, and I hoped there would be care taken to answer the remainder. He answered, He could not tell what the consequence would be, whether ever it would be made up, or not, he could not tell, he was very uncertain.

E. of *Macc.* Sir, I desire to know of you, whether you did not represent yourself to me to be in the utmost distress if this money was not paid to you, that in such case you must be ruined?

Lockman. I remember I told his lordship, that this money I had borrowed of Mrs. Chitty, that I had settled a composition with my creditors, and wanted this money to satisfy them; that it must be paid the next day; and if I did not then pay it, it would be a great damage to me; but I pressed his lordship more, as I depended upon his lordship's promise, and that was the reason I pressed it the more.

E. of *Macc.* I desire he may be asked, Whether I ever promised to pay him at any time before that?

Lockman. When I went to wait upon your lordship at Kensington, your lordship promised me it should be paid; that, as soon as you came to town I should apply to your lordship, and you would give orders, and it should be done.

E. of *Macclesfield.* Whether he did not look upon it, that I did this out of compassion to him.

Lockman. I took it as part of a sum of money due, and I did not look upon it as charity, or out of compassion.

E. of *Macclesfield.* I desire to know, Whether he did not entreat it of me as an act of compassion to him?

Lockman. I don't understand the English terms, I did not use the word compassion; I begged that your lordship would be so good as to order me the money.

E. of *Macclesfield.* I desire to know, Whether the first time he applied to me I promised to pay the money?

Lockman. Your lordship promised the order should be given to the Master, and that I should be paid.

E. of *Macclesfield.* When was that promise?

Lockman. When you promised to order the Master, and I should have the money.

E. of *Macclesfield.* How long before?

Lockman. I can't very well remember; because the solicitor waited several times upon the Master, and the Master told him there was nothing. I went to the Master's house, and then to the Rolls, and there I saw him; and he told me there were no assets in his hands of Mr. Dormer's.

E. of *Macclesfield.* I desire to know, Whether he did not desire a farther sum, after this 1,000*l.* was paid by Mr. Cottingham, and how much?

Lockman. My lord, I ask your lordship's pardon, I don't remember I then asked any other sum. When I saw your lordship afterwards, I asked your lordship, if it was not possible to have another 1,000*l.* You was pleased to tell me, there could be no more paid.

E. of *Macclesfield.* Did not you solicit for a farther sum, till Mr. Cottingham chid you?

Lockman. Mr. Cottingham was a little angry when I pressed him. I went out of doors, Mr. Cottingham followed me. I stood in the yard, Mr. Cottingham came out, and told me, he had an order from my Lord Chancellor to call the Masters to a meeting, and see what could be done. I said, Still this is uncertain; how shall I do, if I have not this money? It will be a great prejudice to me.

E. of *Macc.* I desire to know, whether he did not ask a farther sum of 500*l.* or 570*l.*?

Lockman. There was an order, on a letter of attorney from Mrs. Chitty, for that sum. But never, after I was at your lordship's house at Kensington, did I ask if I could have 1,000*l.* more.

E. of *Macclesfield.* When was that 500*l.* paid?—*Lockman.* I don't know.

E. of *Macclesfield.* I desire to know, whether, between the time you say you was promised the 1,000*l.* and the time of paying it, you did not desire to have the sum of 574*l.* advanced for Mrs. Chitty's use?

Lockman. When your lordship had told me that 1,000*l.* was all that could possibly be obtained, I made no further solicitations.

E. of *Macclesfield.* How long was it that you came to Kensington, to ask me for that 1,000*l.* before the other 1,000*l.* was paid?

Lockman. Three weeks before.

E. of *Macclesfield.* Then after that time you never demanded any more?

Lockman. After your lordship had told me that was all that could be obtained, then I desisted from asking any more.

E. of *Macclesfield.* And that was about three weeks before the time you received the money?

Lockman. I believe between a fortnight and three weeks, or thereabouts.

Com. Serj. I desire he may be asked, whether he can be certain as to the expression, whether this was the last money that was like to be paid, or that my lord would pay?

Lockman. It was, as I remember in these words: If the lady hath no other fortune than what is in Chancery, in the Master's hand, this will be the last of it.

Sol. Gen. We desire Mr. Atwood may be called.

Mr. *Atwood* sworn.

Serj. *Pengelly.* My lords, we desire Mr. Atwood may be asked, whether he was in Court at the time a motion was made upon an order in a cause between Harper and Cate?

Atwood. My lords, I was at the late Lord Chancellor's house, where about the 5th of December last, the motion was made. I was solicitor for Mrs. Harper in the cause. The occasion of it was, There was an estate decreed to be sold, and the money was to be paid into the Master's hands, who was Mr. Dormer: the money was accordingly paid, and the conveyances approved of by the counsel, and a fine agreed upon; but at last the parties would not execute, unless the money was paid them; objecting there would be a deficiency in Dormer's office: therefore they moved that they might not be obliged to execute the conveyance, till the money was applied and paid to the plaintiff. My Lord Chancellor was pleased to declare thereon, that he had heard there would be a deficiency of Mr. Dormer's effects; but it had never judicially come before him; and what knowledge he had of it was only as public news, and referred it to Mr. Edwards to examine whether there was likely to be a deficiency, or not. I was near two months before I could get this order passed; and then the Impeachment came on. The Register told me he was afraid this order would do some mischief. When I had got the order, I was told by several people about the town, that Mr. Dormer's effects were very defective; and that my Lord Chancellor had directed a composition to be made with one Wilson, who was a banker; and had directed Mr. Hiccocks to compound for half-a-crown in the pound, and that others had twenty shillings; and that my Lord Chancellor had directed an enquiry to be made whether there was any deficiency. I was advised to put in these words: 'By what means;' because I was told then, it was by reason of compounding that debt with Wilson; but the Register would not let them stand.

Serj. *Peng.* The making of the order, in this case, confirms the evidence of Mr. Atwood, that his lordship declared he had heard of it no otherwise than as public news; because by this order he directs Mr. Edwards to enquire, whether there was likely to be a deficiency, or not, although it had been so well known to his lordship some years before.

Serj. *Probyn.* He says there are words struck out of this order; I desire to know, whether those words were not added by himself to the order?

Atwood. Yes, they were added by me before it passed.

Serj. *Probyn.* When?

Atwood. After I had the order from the Register.

Serj. *Peng.* When was that?

Atwood. It was near two months before I could get the order passed.

E. of *Macc.* Had you the order passed before the Impeachment?

Atwood. Yes, I believe I had.

E. of *Macc.* Had you it passed before this matter came into parliament?

Atwood. I don't particularly know; I believe it was before your lordship was impeached.

E. of *Macc.* Whether was it after I had parted with the seals?

Atwood. I believe after.

E. of *Macc.* How long was it before yo added those words?

Atwood. Two or three days after I had got the order.

E. of *Macc.* When was it the Register struck out those words?

Atwood. I can't say, I believe it was before the Impeachment. The other side had let those words be in; but yet the Register struck them out.

E. of *Macc.* Was it after I had ceased to be Chancellor?

Atwood. I believe it was.

E. of *Macc.* Was any thing said, at that time, of the accident of Wilson's breaking, and Poulter's going off?

Atwood. I do remember your lordship said, Wilson was become bankrupt, and that he had money of Mr. Dormer's; and you said something of a person that was sued by Wilson, and of a recovery against him; and of an action brought for an escape; and you concluded, upon the whole, that all you knew of the matter was only as public news. This was after you had given an account of the matter of Wilson and of the marshal.

Dr. *Sayer.* I desire he may be asked, whether my lord did not express a doubt, how these matters might come out?

Atwood. I don't know what his lordship was pleased to doubt of.

Serj. *Probyn.* I desire Mr. Atwood would recollect himself, whether there was any notice taken, how this might come out, when the report of the Masters should be made?

Atwood. I don't remember any thing tending to that.

Com. Serj. Whether he took any memoranda of these words, and when?

Atwood. No, I took no memoranda of them, till I was summoned to attend the committee.

Com. Serj. I desire Mr. Atwood may give a reason how he comes to forget facts, and remember a form of words?

Atwood. I don't remember all the facts that have been asked.

Mr. *Robins.* Whether my lord did not mention a particular sum that was owing from Wilson to Dormer?

Atwood. I believe my lord did mention a sum, and I believe it was 18,000*l.*

Mr. *Robins.* Whether he did not mention that Wilson had brought an action of escape against the marshal?

Atwood. Yes; that Wilson had brought an action of escape against the marshal.

Mr. *Robins.* Whether he did not mention, that Wilson had recovered a judgment against the marshal?

Atwood. Yes, that Wilson had recovered a judgment.

Mr. *Robins.* Whether there was any thing said of the escape of Poulter?

Atwood. Yes, my lord did mention, that there was an action brought against the marshal for that very escape.

Com. Serj. Whether my lord, having mentioned these particulars, he did not from thence infer, he could not then tell how matters might come out?

Atwood. I do not remember any thing of that.

Mr. *Lutwyche.* My lords, I shall only make one short observation. The lord Macclesfield saith in his Answer, that he doth not believe that he had any discourse with the Masters about the payment of this 1,000*l.* I submit it to your lordships, whether there are not four or five witnesses to it? We have now done with the Sixteenth Article.

Sol. Gen. We shall proceed to our proofs on the Seventeenth Article. And it will be necessary to lay before your lordships three or four orders, for the proof of this Article.

Mr. *Ralph Parton*, being called, appeared, and proved the several Orders following, which were then all read.

An Order, dated 18 January, 8 Georgii Regis.
Another, dated 8 March, 8 Georgii Regis.
Another, dated 5 July, 8 Georgii Regis.
Another, dated 22 Dec., 9 Georgii Regis.

"Jovis decimo octavo Die Januarii Anno Regni D'ni Georgii Regis octavo, inter Jonathan' Jones Infant' per Eliza' Jones Vidua' prox' Amit' et dicta' Eliza' Jones Quer', Thoma' Jett Arm' et Petru' Wise, Defendentes.

"Upon opening of the matter, this present day, unto this Court, by Mr. Serjeant Cheshire, of counsel with the plaintiff Jonathan Jones, in the presence of Mr. Ketelbey, of counsel with the plaintiff Elizabeth Jones, and the defendant Wise; and Mr. Horsely, of counsel with the defendant Jett. The counsel for the plaintiff Jonathan Jones alleged, that Jonathan Jones deceased, father of the plaintiff Jonathan Jones, and husband of the plaintiff Elizabeth, by his will, devised one moiety of his estate, which was wholly personal, after payment of his debts and funeral expences, to the plaintiff Elizabeth, and the other moiety to the plaintiff Jonathan Jones, when he should attain his age of 21 years, together with the produce thereof, and made the defendants, Jett and Wise, executors in trust for the said plaintiffs, who duly proved the said will. That the plaintiffs having brought their Bill in this Court, to have an account of the said testator's estate, for a maintenance for the plaintiff Jonathan, during his infancy, and a performance of the said will: Upon the hearing of this cause it was referred to Mr. Dormer, then one of the Masters of this Court, to take an account of the said testator's estate; and the surplus thereof, after the deductions therein mentioned, was to be divided into moieties; and the plaintiff Elizabeth's moiety was forthwith assigned to her; and the other moiety was to be placed out at interest, by the said Master, for the said infant's benefit. And the said Master was to assign a maintenance for the said plaintiff, for the time past; and was also to consider what was proper to be allowed for his maintenance for the future. That the said Master, having proceeded to take an account of the said testator's estate, it appeared, that so much thereof was raised by the sale of Bank and South Sea stock, and brought before the Master, as amounted to 5,985*l.* 3*s.* 4*d.*; one moiety whereof, after payment of her share of the costs of the suit, belongs to the plaintiff Elizabeth Jones, and has been accordingly paid to her; and the other moiety belongs to the plaintiff Jonathan Jones, and is now in the hands of Mr. Edwards, one of the Masters of this Court, who succeeded the said Mr. Dormer, and to whom the reference in this cause hath been transferred. That the plaintiff Jonathan Jones, hath now attained his age of 21 years, as by affidavit and certificate appears, and is entitled to receive his moiety of the said monies, after deduction of his share of the said costs. And having contracted some considerable debts for his maintenance, and otherwise, during his infancy, for which he is threatened to be arrested, in case the said debts are not speedily paid: It was therefore prayed, that the said Master may, out of the monies in his hands, pay to the plaintiff, Jonathan Jones, the sum of 400*l.*, which, upon reading the said affidavit and certificate, Elizabeth Jones, and the defendant, Wise, who consented thereto, and the counsel for the defendant, Jett, who did not oppose the payment thereof, is ordered accordingly."

"Jovis octavo Die Martii Anno Regni D'ni Georgii Regis octavo, inter Jonathan' Jones et Eliza' Jones Quer', Thoma' Jett Arm' et Petru' Wise, Defendentes.

"Upon opening of the matter, this present day, unto the right honourable the Lord High Chancellor of Great Britain, by Mr. Serjeant Cheshire, being of counsel for the plaintiff, Jonathan Jones, in the presence of Mr. Ketelbey, of counsel for the plaintiff Elizabeth Jones, and for the defendant Wise: It was alleged, that Jonathan Jones, deceased, father of the plaintiff Jonathan Jones, and husband of the plaintiff Elizabeth Jones, by his will, devised

one moiety of his estate (which was wholly personal) after payment of his debts and funeral expences, to the plaintiff Elizabeth, and the other moiety to the plaintiff Jonathan Jones, when he should attain his age of 21 years, together with the produce thereof; and made the defendants, Jett and Wise, executors in trust for the said plaintiffs; and the said defendants duly proved the said will. That the plaintiffs exhibited their bill into this Court against the defendants, to have an account of the said testator's estate, and a performance of his will. And upon the hearing of the cause, it was referred to Mr. Dormer, then one of the Masters of this Court, to take an account of the said testator's estate; and the surplus thereof, after the deductions therein mentioned, was to be divided into moieties; and the plaintiff Elizabeth's moiety was to be forthwith assigned to her; and the other moiety was to be placed out at interest by the said Master for the said infant's benefit. That the said Master having proceeded to take an account of the said testator's estate, it appeared, that so much was raised by the sale of the Bank and South Sea stocks, and brought before the said Master, as amounted to 5,985*l.* 3*s.* 4*d.*, one moiety whereof, after payment to the plaintiff Elizabeth Jones's share of the costs of this suit, belonged to her, and had been accordingly paid to her; and the other moiety belonging to the plaintiff Jonathan Jones, and was in the hands of Mr. Edwards, one of the Masters of this Court (who succeeded the said Mr. Dormer.) That the plaintiff, Jonathan Jones, has attained the age of 21 years, as by certificate and affidavit appears, and is entitled to receive his moiety of the said money, after deduction of his share of the said costs: and he had contracted for a post in the army, which, with his equipage, will amount to 2,000*l.*, which he is advised will be very advantageous for him to purchase; and therefore it was prayed, that the said Master may pay to the plaintiff, Jonathan Jones, out of the money in his hands, a sum not exceeding 2,000*l.*, to be laid out in the purchase of a commission, and for other purposes. Whereupon, and upon hearing of the plaintiff, Elizabeth Jones, and defendant Wise's counsel; and hearing an affidavit of notice of this motion to the defendant Jett read, and what was alleged by the counsel on both sides; it is ordered, that the said Master do, out of the money in his hands, pay unto the plaintiff, Jonathan Jones, the sum of 2,000*l.*; the plaintiff, Elizabeth Jones, and the defendant Wise, having subscribed the Register's book, signifying their consent thereto."

"Jovis quinto Die Julii Anno Regni D'ni Georgii Regis octavo, inter Jonathan' Jones et Eliza' Jones, Quer', Thoma' Jett Arm' et Petru' Wise, Defendentes.

"Upon opening of the matter this present day, unto the right honourable the Lord High Chancellor of Great Britain, by Mr. Serjeant Cheshire, being of counsel for the plaintiff, it was alleged, that Jonathan Jones deceased, father of the plaintiff Jonathan Jones, and husband of the plaintiff Elizabeth Jones, by his will devised one moiety of his estate (which was wholly personal,) after payment of his debts and funeral expences, to the plaintiff Elizabeth, and the other moiety to the plaintiff, Jonathan Jones, when he should attain his age of 21 years, together with the produce thereof, and made the defendants, Jett and Wise, executors in trust for the said plaintiffs, and the said defendants duly proved the said will. That the plaintiffs exhibited their bill into this Court against the defendants, to have an account of the said testator's estate, and a performance of his will; and upon the hearing of the cause, it was referred to Mr. Dormer, then one of the Masters of this Court, to take an account of the said testator's estate; and the surplus thereof, after the deductions therein mentioned, was to be divided into moieties, and the plaintiff Elizabeth's moiety was to be forthwith assigned to her, and the other moiety was to be placed out at interest by the said Master for the said infant's benefit. That the said Master having proceeded to take an account of the said testator's estate, it appeared by several certificates from the said Master, that so much thereof was raised by the sale of the Bank and South Sea stocks, and brought before him, as amounted to 5,985*l.* 3*s.* 4*d.*; that one moiety thereof, after payment of the plaintiff Elizabeth Jones's share of the costs of this suit, hath been in pursuance of several orders of this Court paid to her, and the other moiety, which belonged to the plaintiff Jonathan Jones, was paid over to Mr. Edwards, one of the Masters of this Court (who succeeded the said Mr. Dormer.) That the plaintiff Jonathan Jones, having attained his age of 21 years, and being entitled to receive his moiety of the said money, after deduction of his share of the said costs; and he having contracted for a post in the army, which, with his equipage, will amount to 2,000*l.*, he did, on the 5th of March last, apply to the Court for that money, and it was then ordered, that the said Master should, out of the money in his hands, pay unto the plaintiff, Jonathan Jones, the sum of 2,000*l.*, the plaintiff Elizabeth Jones, and defendant Wise, having subscribed the Register's book, signifying their consent thereto; that pursuant to the said order, the said Master paid the said 2,000*l.*, and there now remaining in his hands of the plaintiff Jonathan Jones's share of the said money, about the sum of 642*l.* That the said plaintiff Jonathan Jones, having present occasion for the said money, hath executed a letter of attorney to the plaintiff Elizabeth Jones, his mother, dated the 25th day of May last, empowering her to receive all monies due to him from the said Master, and the interest thereof, for the purposes therein mentioned. It was therefore prayed, that the said Master may pay to the said plaintiff, Elizabeth Jones, the remainder of the money which is in his hands, belonging to the said Jonathan's share, pur-

suant to the letter of attorney executed for that purpose, which, upon hearing of Mr. Horseley, of counsel for the defendant Jett, and what was alleged on both sides, his lordship held reasonable, and doth order the same accordingly."

"Sab'ti vicesimo secundo Die Decembr' Anno Regni D'ni Georgii Regis nono, inter Prideaux Sutton Cler' et Anna' Uxor' ejus Mercy Sheldon Spinstr' et Egidiu' Lawrence gen' Extor' Winifred Sheldon Spinstr' Defunct' Quer', Elizam Chitty et Joh'em Russell et al' per Billa' ad revivend' et Supplement' Defend'.

Whereas the defendant Elizabeth Chitty, on the 11th of this instant December, preferred her Petition to the right honourable the Lord High Chancellor of Great Britain, shewing, that the plaintiff and Winifred Sheldon, since deceased, having executed their bill for an account of the estate of Ralph Sheldon, who died in the East-Indies; and to have their shares and proportions thereof, pursuant to his will; it was on the hearing of this cause, the 28th of May, 1715, declared, that the defendant, Elizabeth Chitty, was entitled to one third of the said estate, under the will of the testator Sheldon, her second husband, in her own right, and to a moiety of the other two thirds in right of, or as surviving the children she had by the said Sheldon, who were dead, and that the other moiety of the said two thirds belonged to the plaintiffs, or those whom they represented and decreed the same, after just allowances to be paid and distributed accordingly; and sir Robert Nightingale, bart. since dead, having by his answer admitted to have in his hands 10,470*l.* 3*s.* 6*d.*, part of the testator's estate: it was ordered, that he should carry 10,000*l.* thereof before Mr. Dormer, then one of the Masters, to be by him placed out at interest on government, or such other security as he should approve of for the benefit of the parties to whom the said should belong. In pursuance whereof the said Robert Nightingale carried the said 10,000*l.* before the said Master, who placed the same out at interest, and on the 29th of July, 1719, though the said 10,000*l.*, with the interest, which had been received by the said Master, amounting to 11,359*l.* 7*s.* 3*d.*, the said Master, by his report, certified, that he had placed 11,300*l.* part thereof, out on the land-tax, for the year 1719, at 4*l.* per cent. and that the 59*l.* 7*s.* 3*d.* remained in his hands; that on the 3d of August, 1720, the plaintiffs, by Petion, applied to his lordship, that the Master might pay them some money to carry on this cause, and for their other occasions; upon hearing whereof they were ordered 600*l.* out of the money in the Master's hands, which they have received accordingly. That the defendant Elizabeth Chitty had, ever since the death of her late husband Josiah Chitty, wanted money, not only to defend the said cause, but also for her support, and other necessary occasions, and that neither she, nor her late husband, had received any part of the principal or interest before the Master, nor any other part of the testator's estate, except some jewels, which were delivered up by the trustees of the testator's will in India to her and her late husband, which, or the greatest part thereof, she claimed as her paraphernalia, but that she had no benefit or advantage thereof, her husband having sold and disposed of them in his life-time. Therefore, and for that the money in the hands of Mr. Edwards, one of the Masters of this Court, who succeeded the said Mr. Dormer in his office, were considerably encreased by the interest which had been received by him, and for that the said Mrs. Chitty was, as aforesaid, entitled to two thirds of the said testator's estate, except what should be decreed thereout to her children by her first husband, who were entitled to one moiety of their father's estate, which was possessed by the said Ralph Sheldon, and for that she was obliged to maintain them, it was prayed, that the said Mr. Edwards might, out of the money in his hands, and which should be paid in upon the coming in of any of the securities taken for the same, pay unto the defendant Mrs. Chitty, such sum of money as his lordship should think fit, to enable her to carry on the said cause, and for her immediate support, and other occasions. Whereupon all parties were ordered to attend his lordship on the then next day of Petitions. And whereas the said plaintiffs, on the 18th day of this instant December, also preferred their Petition to his lordship, shewing, *inter al'*, that they were, through their great occasion for money, forced to apply the greatest part of the money ordered them as aforesaid, towards their support; and that the said cause had been long depending, and very expensive, and was likely to undergo great travail before the said Master, before the said account could be taken, so that they had great occasion for more money, not only to carry on the said cause, but also for their support, and other necessary occasions; and therefore praying that the said Master might also out of the monies in his hands, and which should be paid in, upon coming in of any of the securities taken for the same, pay unto the plaintiffs, or their solicitors, such sums of money as his lordship should think fit, to enable them to carry on the said cause, and for their immediate support and other occasions; and the matter of the said Petition being ordered to come on with the defendant Chitty's Petition; and counsel on both sides this day attending accordingly. Whereupon, and upon hearing both the said Petitions read, and what was alleged by the counsel on both sides, his lordship doth order, that the said Mr. Edwards do, out of the money in his hands, pay unto the defendant, Mrs. Chitty, the sum of 600*l.*, and also unto the plaintiffs 100*l.* a piece; and it being now alleged, that John Wyvill, esq. having exhibited his bill against the said Giles Lawrence, for payment of a legacy of 200*l.* bequeathed to

him by the will of the said Winifred Sheldon: it was on the hearing the said cause, the 1st day of December, 1721, decreed, that the said Mr. Wyvill should be paid the said legacy and interest, together with the costs of that suit, out of the assets of the said Ralph Sheldon. It is further ordered, that the said Master, do out of the money in his hands, pay the plaintiff, Lawrence, the further sum of 300*l.* to enable him to satisfy the said decree."

Mr. *Lutwyche.* Pray, shew Mr. Edwards those Orders. [The Orders shewn to Mr. Edwards.]

Mr. *Lutwyche.* My lords, we desire that Mr. Edwards may be asked, whether he hath paid any money in that cause?

Edwards. Here are two causes, which is it you mean, that of Jones and Jett?

Mr. *Lutwyche.* Yes, that of Jones and Jett.

Edwards. The money ordered, by those several orders, hath been paid by me.

Mr. *Lutwyche.* I desire to know, whether Mr. Edwards can inform your lordships, whether it is the whole money, or but in part?

Edwards. It is the whole money in the cause.

Mr. *Lutwyche.* I desire he may be asked, whether the money was paid out of Mr. Dormer's effects, or out of his own?

Edwards. Out of Mr. Dormer's effects.

E. of *Macclesfield.* My lords, Mr. Edwards is a little mistaken, please to put the orders in; here are three orders in one cause, and one in another; I desire to know, whether in both causes the whole money was paid out?

Edwards. In that between Jones and Jett, the whole money was paid out; in the other, between Sutton and Sheldon, the whole was not paid, but only part.

Serj. *Pengelly.* We beg leave to ask Mr. Edwards, whether he did not pay the whole that was ordered by those several orders?

Edwards. Yes, my lords.

Mr. *Lutwyche.* Mr. Edwards did tell your lordships before, that all the money, arising by Mr. Dormer's effects, was paid out and gone.

Serj. *Pengelly.* My lords, we have gone through these three Articles that have been opened, and we shall call no more proof to them.

Then the House adjourned to Monday next at ten o'clock in the forenoon.

The Fourth Day.

Monday, May 10.

The Lords being seated in their House, and the Managers being come, and the Earl sitting on a stool, as before, and his counsel and solicitors at the bar, the serjeant at arms made proclamation for silence, as also another proclamation, that all persons concerned were to take notice, that Thomas earl of Macclesfield now stood upon his Trial, and they might come forth in order to make good the Charge.

L. C. J. *King.* Gentlemen of the House of Commons, you may proceed.

Mr. *Plummer.* My lords, I am commanded by the Commons, to assist in maintaining their Impeachment against Thomas earl of Macclesfield; and when I consider how necessary it is for the honour of his majesty's government, that an impartial examination should be made into the behaviour of this Earl, while he enjoyed the high office of Chancellor; I am persuaded, that every good subject must with pleasure observe in what manner this prosecution is carried on; it must be a satisfaction to them, to see the Commons placing a confidence in your lordships' justice, and proceeding in the legal parliamentary method by impeachment, and your lordships meriting that confidence, by laying aside all useless ceremonies, and making the prosecution practicable and easy. A harmony between the two Houses of Parliament always to be wished for, and which alone can bring impeachments to a happy issue, and deter great offenders from oppressing their fellow subjects.

My lords, in former reigns, prosecutions of this kind have met with other obstructions, and the crown has often interposed its authority to save a favourite minister; but his majesty, who has no other views but the welfare and happiness of his people, and who is always attentive to their interest, was the first who took notice that the earl of Macclesfield had abused the trust and confidence reposed in him. And who can, without the deepest sense of gratitude, consider the conduct of his majesty in this affair, who immediately dismissed him his service, and left him to the justice of an injured nation? And the earl of Macclesfield himself will have this advantage by it, that his name will be delivered down to posterity, as a monument of his majesty's paternal goodness to his people. The immense liberalities, the great honours, the high dignities conferred on him by his majesty, will be so many marks of his royal munificence to the Earl, while he appeared to be his worthy and faithful servant. And posterity will with due veneration observe, that neither the greatest favour, the nearest access to his sacred person, nor any former merits towards himself, and his royal family, could, in his majesty's reign, shelter the highest officer of the crown from justice, who, presuming on those advantages, would venture to oppress his majesty's loyal and faithful people.

My lords, the particular province assigned me in this prosecution, is to make good the Eighteenth Article, wherein I shall have the assistance of a gentleman, who will amply supply all the defects or omissions I shall be guilty of.

As this Article has been read by your lordships' clerk, I shall not mis-spend your time in a needless repetition of it; but will observe, that the substance of the Charge contained in it, is a wilful neglect of the high trust reposed in the earl of Macclesfield, as Chancellor, that he did not restrain the Masters of the High Court of Chancery, from trafficking with the suitors,

money and effects, but did permit and encourage that practice, though he was advised to put a stop to it, and fully informed of the dangers, which were then likely to ensue, and which have since actually ensued, to the great loss and injury of the suitors of the said Court.

My lords, As this wilful neglect is highly criminal in itself, so it is greatly aggravated by the unjust and corrupt views which induced him to be guilty of it, and the pernicious consequences which have necessarily attended it; and, my lords, since you have heard the evidence that has been given on the former Articles of the exorbitant sums of money which he exacted for the disposal of the offices of Masters in Chancery, even after Dormer's failure, we don't doubt but your lordships are convinced, that he left the Masters that unreasonable, unlimited power over the effects of the suitors of the Court, with no other view, but as a bait and incitement to others to purchase those offices (when vacancies should happen) at the same, or greater prices.

As I have stated the charge contained in this Article, in as clear a manner as I am able; I beg leave, my lords, to make some observations on the Earl's Answer. He begins with an absolute denial of his knowing how the Masters kept or disposed of the money and effects belonging to the suitors of the Court. This Answer, my lords, was a surprize to the Commons, as well because such an ignorance would have been criminal in the person, who ordered such prodigious sums of money into their hands, and who should be supposed to have had some care of the suitors; as also, because we have the clearest proofs imaginable, that he did know it, and it has already been proved by the examination of several of the Masters before your lordships. But what want can we have of proofs? When the earl of Macclesfield himself in his farther Answer to this Article confesseth it, by saying, that after Mr. Dormer's misfortune, he thought of several methods, and several proposals were made to him by persons he consulted on that occasion, to prevent any inconvenience on the like accident, for the future. Pray let us consider, what was Mr. Dormer's misfortune? What was this accident? Why, truly, Mr. Dormer had trafficked with the suitors' money and effects, and had lost near 30,000*l.* and this the earl of Macclesfield knew, and this made him think how to prevent such inconveniencies for the future. My lords, here is one of those inconsistencies the Commons take notice of in their reply, and on which (without any farther proofs) they might safely demand your lordships' judgment.

But to consider his Answer farther; he says, he believes it will not be held criminal in him, not to have established any of the proposals that were made to him by the persons he consulted on that occasion; some things were proposed that he thought impracticable, some insufficient, and some inconsistent with that complete regulation he hoped to make: the objects he proposed to himself were, to make good Mr. Dormer's deficiency, to secure the suitors from any future loss, and to make several regulations relating to the offices of the Masters: and he thought these would be best done together; nor had he perfected the scheme of any of them to his own satisfaction.

My lords, I am unwilling to make any observations on this part of his Answer; it is in itself so gross, I am afraid, if I took it in pieces, I should appear ludicrous, which I shall take great care to avoid on so solemn an occasion.

But I appeal to your lordships, if a person was to read this Answer, who was not acquainted with the times of these occurrences, whether he must not imagine that the earl of Macclesfield had quitted the great seal within some very short time after Mr. Dormer's failure? Whereas it has appeared to your lordships, that Mr. Dormer went away from that office in the year 1720, and that the earl of Macclesfield continued Chancellor till January last, which is more than four years after; during all which time (by his own confession) he knew the affairs of the Masters of the Court of Chancery to have been in great disorder, and to have wanted several regulations: but, because he could not think of a scheme perfectly to his mind to answer all his designs, he therefore has done nothing. This Answer must be left to your lordships' judgment, but I am afraid, my lords, the letting the Masters go on, without any check, was the scheme the most to his satisfaction, and most effectually obtained the ends he really proposed to himself, which were the making an exorbitant gain by the sale of their offices, which must have fallen in their price, if a stop had been put to their trading with the suitors' money.

My lords, he farther answers, That he remembers no proposal that he thought would take it totally out of the power of the Masters to dispose of the securities or effects, or effectually secure the cash. I can't omit taking notice of the wording this paragraph; and I believe your lordships will agree with me, that the words, 'he thought, totally, and effectually,' are thrown in with great caution. My lords, we think we can prove to you, that a proposal was made to him, that would have taken it out of the power of the Masters to have disposed of the securities and effects, and would have secured, in great measure, the cash; and this evidence the earl of Macclesfield must be well aware of, for he has it in his hands as well as we; and I foresee the strength of his defence, in this point, lies in the caution of his Answer: but, my lords, if any proposal was made to him, which would have cured the greatest part of the evils the Court laboured under, I am sure your lordships will hold it criminal in him not to have made use of it, and the rather, because he substituted no other in its room.

My lords, he admits he took no security of the Masters, and says, he was never asked so to do. My lords, we will prove that he was

asked so to do, and that taking security was part of the proposal I have mentioned. In this place he takes notice of his predecessors, who (as he says) were wiser men than himself, and who took no security of the Masters. My lords, we don't accuse his predecessors, nor are we obliged to justify them; but if I may be permitted to give my own private opinion, it is, that if such misfortunes had happened in his predecessors' days, and such application had been made to them, they were so wise, they would have applied a proper remedy: his not doing so, under these circumstances, we look on as a plain permission, and strong encouragement to the Masters to traffic with, and employ the suitors' money for their own gain and profit. And it must appear so in a stronger light, when your lordships are acquainted that Mr. Lightboun, who is himself a Master in Chancery, was the person who made the proposal, and who must (by my lord's not using it) plainly see, that my lord was resolved to lay no restraint on them, which might have tempted Mr. Lightboun himself to have made an ill use of that power: but as he professed to my Lord Chancellor his abhorrence of the Masters abusing their trust, by alienating the suitors' effects, and desired my lord to put a stop to that practice; so it appeared by his accounts given in before the judges, that he had appropriated the specific securities of the suitors to every particular cause. And, my lords, we look on it as a great aggravation of the crimes contained in this Article, which I have now gone through, that my lord Macclesfield should continue to act with such mean, low views, as were unbecoming a Master in Chancery, when he had the assistance of a Master, who behaved himself with a prudence, integrity, and resolution, which would have been becoming the Lord Chancellor.

Mr. *Cary*. My lords, it is my province to assist the gentleman that spoke before me, in supporting the Charge of the Commons in the 18th Article, which he has opened with so great force and perspicuity, that it is unnecessary for me to give your lordships more trouble upon it, than by making an observation or two on the most material parts. The beginning of this Article sets forth, "That the earl of Macclesfield very well knew, or was informed that the Masters did, or that it was in their power to dispose of, and employ the suitors' money and effects." To which he is pleased evasively to answer, "That he never knew how the Masters kept, or disposed of the money and effects belonging to the suitors of the Court." The contrary of this will be abundantly proved, in the manner the gentleman has already stated it.

But were it not, my lords, so strong in proof, the guilt to me appears self-evident; it is much the same whether he knew it, or knew it not; his lordship may take the alternative. What! did he, Lord Chancellor, supreme director of the Court, the great trustee of England (who ordered the money into the Masters' hands, who ordered it out of their hands), did he know nothing of their power over it? Was he the only man in England that knew nothing of their deficiency? And if he was, my lords, is that ignorance an excuse or aggravation? But we shall prove to your lordships, that he not only was told of this traffic with the suitors' money, but was foretold the consequences of it; the danger of future losses was pointed out to him, and proposals for preventing them were given him in writing.

And who was it, my lords, that made these proposals? Who gave him this warning? One of the Masters of the Court, one interested in the traffic of the suitors' money, a gamester at the same table with the impeached earl. Advice from such a hand must be sincere and unsuspected; nothing but justice, or a strong apprehension of their common danger, could have extorted it; nothing but the blindest avarice could have prevented the compliance with it: but what still renders this conduct more amazing is, that the impeached lord had not the advantage of a single proposal only, and from a single Master; but of several proposals, and from several of them. Mr. Kynaston will inform your lordships, "That he and other Masters waited on the Lord Chancellor, and proposed to give security in land, or money, for their cash, and to make their trust less by putting the securities in two Masters' names, or in the names of the parties and one of the Masters;" with which he then appeared pleased, though he afterwards did nothing in it, and expressed his dislike of the proposal. Yes, my lords, the proposal was too reasonable to be refused, and too self-denying to be followed. So far was the unfortunate lord from following it, or acting in any manner consistent with it, that soon after the failure of Mr. Dormer, after these proposals were made to him, he sells the offices of several Masters at most exorbitant prices. And was this what my noble lord sets forth in his Answer, "As one of the expedients he thought of, after Dormer's misfortune, for preventing any inconvenience, on the like accident, for the future?" Was this the only method of cure the noble earl brought to such perfection, as to venture to put it in practice?

My lords, the gentlemen embarked in the same bottom with this unhappy lord, saw the ship sinking, and proposed throwing over-board part of their unjustifiable gains to prevent their general wreck; but the impeached earl does not only boldly steer on the same course, but takes in lading, more weight of guilt, if not in defiance of the danger, certainly in the neglect of it.

And how, my lords, does his Answer excuse this conduct? He admits that several proposals were made on that occasion; but "some he thought impracticable, some insufficient, some inconsistent with that complete regulation he hoped to make." And because some

were insufficient, some inconsistent, and not answering the full idea of perfection proposed by his lordship, must therefore nothing be attempted? Must we have no relief, because we despair of an absolute cure? Must no remedy be applied to a dying person, because it is not certain it will restore him to his perfect strength? Thus far, indeed, is certain, it is much better to do nothing, than to continue such methods as first brought the distemper upon him. We must therefore leave it with your lordships to judge, whether the inconsistency of the proposals, with the Earl's private views, was not the true reason of their being thought impracticable and insufficient? And what those views really were, the whole tenor of our evidence has, and will shew: views beneath the dignity of his high office, and far below a member of this august assembly.

My lords, the Commons farther charge this unhappy earl, That he not only knew, but connived at, and encouraged this destructive traffic: and in answer to this he says, "That he gave no permission nor encouragement to the Masters of the Court, to employ or traffic with the suitors' money." We have shewed your lordships he knew it, and knew it in the most affecting manner, by the ruin it had produced. We need not shew you that he had power to prevent it. And surely, my lords, to know it, and not prevent it, in his situation, was to permit it. And as his not preventing it was a permission, so his example was an encouragement. And when the Masters saw him (the greatest object in the compass of their view) taking every indirect method to make the most of his high office; sure, they must think that example (joined to the necessity he himself laid them under by the exorbitant prices he exacted) a sufficient encouragement to authorize them in the like practices in theirs. The examples of great men, my lords, are encouragements: and the assembly I see before me is an illustrious proof they ought to be so, and will do honour to those who follow them: and from the influence those examples have, and ought to have over the rest of mankind, it has been supposed, that the only passage to honour was through the temple of virtue; but, my lords, though there be but one passage to it, there are many from it; and so many are the frailties of human nature, that the building would be imperfect, without a back-door to let out whatsoever sullies or pollutes it: A door, my lords, your ancestors have opened to former Lord Chancellors.

But we shall call our evidence, and submit the whole, with the greatest security and satisfaction, to your lordships' judgment.

Mr. *Plumner*. I desire Mr. Lightboun may be called.

Mr. *Lightboun* being called, appeared.

Mr. *Plumner*. I desire Mr. Lightboun may inform your lordships, whether he had any discourse with my Lord Chancellor, about putting the offices of Masters of Chancery into a better regulation?

Lightboun. My lords, in order to answer this question, it will be necessary for me to repeat some part of the account I gave when I was last at your lordships' bar. I then acquainted your lordships, that in the beginning of the summer, in the year 1722, the lord Macclesfield having directed me to attend him, told me that he had heard I had not contributed my 500*l*. towards making up Mr. Dormer's deficiency, as the other Masters had done; that he did not expect I would have stood out, and was sorry to hear of it, as he had a more particular regard to my conduct than any of the rest, because I was the only Master of his immediate choice; and on his lordship's telling me that it was first proposed by the Masters, and not by his lordship, I told him I was not willing to comply with it, and thought it a dangerous expedient; that it might be hereafter looked upon as an undertaking one for another, and therefore I would not come into it; and that as this accident had happened to Mr. Dormer, the like might happen again to others, and might be the ruin of us all, if such a construction were put upon it. My lord was pleased to say, it was the only expedient he could think of for making good the deficiency. I told him I had as much at heart the doing of that as any body; and that if a proper expedient could be found out to pay Mr. Dormer's deficiency, and prevent the like accident among us for the future, for putting the offices on such a foot, that the Masters might execute them with honour to the Court and themselves, and with safety to the suitors, I should be glad to contribute to such regulations. His lordship said, he should be glad if any such thing could be thought of; and asked me, if I could think of any method by which that might be done. I told him I believed I had; at which he expressed great satisfaction; and we being then standing, his lordship desired I would sit down. He then asked me in what manner it was that I proposed the suitors should be made safe: I told his lordship that I apprehended it was impossible to expect, that the Masters could give a security adequate to such a trust: that there were many instances of great officers, whose trust was so great as to be above giving ample security, particularly the tellers of the Exchequer, and the treasurers of the South-Sea and East-India companies: but if a competent security were taken, and such I apprehended might be given, I hoped it would answer the intent, and give satisfaction, since ample security for so great trust could not be expected. I then told his lordship, that if the causes of Mr. Dormer's misfortunes were considered, they would be found not only to proceed from squandering or misapplication of the cash, but from power over the securities in his hands; for that the money could not be so much, but the securities amounted to a greater sum. He said it might be so; but how to prevent it he

would be glad to know. I told his lordship, that if the securities, for the future, were to be taken in the names of the Master, and one or more of the parties, the suitors would be safe. It was then observed, but whether by my lord, or me, I do not remember, that an objection might arise to this method, for that if either the Master or the party should die, the trust would survive; and thereby either the Court lose its power over the security, or the Masters' sole power over it be restored; but, to prevent that, I proposed that they might be taken in the name of two or three, or more of the Masters, with or without the persons interested, as the Court should think proper; and that it was hardly to be imagined that all the Masters would betray their trust, and risk their fortunes to oblige any one, by suffering him to traffic with the securities of the Court, taken in their joint names; especially if care was taken, that such Master as was to be joined, or be a check upon another Master, should have a third to be a check upon him. My lord Macclesfield objected, that there was a great number of South-sea and India bonds, and other securities, payable to the bearer, that could not be in the names of any particular persons, and so could not be secured in that manner; and that it would be troublesome to lock them up. To which I replied, I knew no occasion for putting out money on South-Sea or India bonds, or such securities, since there were other securities sufficient, which might be under a proper restriction, and which were not partable, but are transferable in books at the Bank, or elsewhere, viz. Stocks, Bank Annuities, Civil List Annuities, Four per Cent. Annuities, Land and Malt Tallies, and Lottery Orders, which were assignable by indorsement; and that if these securities were taken in the names of several persons, it would be impossible for any one person to dispose of them, without the knowledge and consent of all. My lord expressed great satisfaction at this proposal; and then asked me, in what manner Mr. Dormer's deficiency would be provided for? I then acquainted his lordship, that there was always a considerable cash in each Master's hands; and that if some part of that was placed out at interest, in the name of all the Masters, it would be no injury to the owners, if it was ready when called for; and the produce would raise a fund to pay Mr. Dormer's debt; and that it was very likely the lords of the Treasury might, on such an occasion, give us the preference, and let us chuse a proper part of the loans on the land and malt tax, to lend the money upon; that if any Master wanted any part of the money he had placed out on that occasion, to answer the suitors' demands, such securities were easily converted into money. I was unwilling to fix any sum for each Master to advance; but believe I did mention 3, 4, or 5,000*l.* for his lordships' consideration; and took notice that would amount to 40 or 50,000*l.* and would, in due time, raise a sum of money sufficient to answer the deficiency of Mr. Dormer. My lord made some doubts; but said, he would be exceeding glad to give his assistance; but was afraid he could not properly order the suitors' money to be laid out, but for their benefit whose money it was. I said, I thought that might be done without any order, if his lordship approved it, and the Masters all came into it, and placed it out in all their names; and that at any time, by disposing of the security taken for it, the money might be raised, when wanted. My lord made some doubt, whether it could well be done; but was pleased with the proposal: and many other things were said, which I cannot, at this distance of time, recollect. I had, my lords, two views in it, but won't be positive that I mentioned them to my lord, I apprehended it would not only raise a fund to pay Mr. Dormer's debt; but that it would divest each Master of the power over 5,000*l.* of the suitors' money, which he had in his hands. I also took notice, that if some small security was taken from the Masters, but am not certain that I mentioned any sum; but believe I might say 5,000*l.* and that such a security, with our offices, valued at about 5,000*l.* a-piece, would, with the money placed out for the payment of Mr. Dormer's debt, be a security for the money in our hands, were we but divested of the power over the securities, which was four parts in five of the trust: and though 15,000*l.* will not answer the money which a Master may sometimes have in his hands; yet where a man gives a security for 14 or 15,000*l.* he'll scarce run away for 20,000*l.* This I thought might be of service to the public, and desired my lord to consider of it: and his lordship said, that something might be grafted on this plan; and desired me to put it in writing. I told his lordship I did not know, whether this scheme might be agreeable to every body; that I came into the office but very lately; and that it was necessary for me to have a good correspondence with my brethren; and that I was afraid, if it should be known that I proposed any thing without their privity, I should be used more unkindly among them than I had already been; and therefore hoped his lordship would not let them know that it was my proposal, nor shew them any thing of mine in writing; and took my leave of my lord at that time. The other Masters knew I had been with my lord; but I did not communicate the occasion of my going to him, or the proposal; but I sounded the rest of the Masters, how any proposal of this kind was agreeable to them: most of them were averse to it, particularly that of divesting them of the securities; because that shewed a distrust of them, and they said, would diminish the reputation of the office. They were against placing out any such sum as 5,000*l.* some were rather willing to contribute annually, than to pay such a sum of money down: and finding them averse to it, I was a little cautious how I put this proposal into writing. It was near a month before I set about it; and then did it by way of letter, in which I took notice in the beginning, that it was in obedience to his lordship's commands

Mr. *Plummer.* I beg pardon for interrupting the witness; I desire he may be asked, if he did not send that letter to my lord Macclesfield?

Lightboun. I wrote a letter, to the same purport or effect with what I had proposed, except in some instances which I found other Masters averse to, and was cautious of carrying it too far; and believe, instead of 5,000*l.* to be placed out, I only mentioned 2,000*l.* or such other sum as should be agreed on. And though I mentioned a larger sum, when I was with my lord, and a smaller by letter, I left that to my lord's direction, as his lordship should think necessary. I don't remember, or believe, that I took notice in my letter of the small security I proposed to be taken, the rather, because the Masters differed much in their thoughts about that: some of them were for giving none; therefore I said nothing of it. I thought that was my lord's province more than mine; but I stuck the more closely to that of placing out of the money for payment of Mr. Dormer's deficiency, and taking the securities in several Masters' names. And when I had writ the letter, I sent it to my lord about June or July, 1722, by my clerk, who told me he delivered it to my lord's servant.

Mr. *Plummer.* I desire to know, if he kept any copy of that letter?

Lightboun. I kept the original draught, which I apprehend I writ the letter from. I can't say it is an exact copy; because in transcribing, I might alter words which I disliked, and put in others; and therefore I am not sure it is a true copy; it may vary in form, but not in substance.

Mr. *Plummer.* I desire he may be asked, whether ever he spoke to my lord about it, and that my lord acknowledged the receipt of this letter?

Lightboun. My lords, I think I did say, in the presence of some of the Masters, when my lord talked of taking security in several Masters' names, that if his lordship would look into the letter I writ to him at such a time, he would find that proposal made: I don't remember my lord made any reply, he did not deny it. But not long before Christmas, my lord did mention this letter to me, upon this occasion: when I was passing my accompt before the judges and the directors of the Bank, I had told them of this letter; which his lordship, having heard of, asked me, what I had said about it? I told his lordship, I had acquainted them with the contents of the letter I wrote: says he, I have that letter by me.

Mr. *Plummer.* I desire Mr. Lighthoun may produce the letter.

Lightboun. My lords, I have not the letter.

Mr. *Plummer.* The original draught you mention.

[Mr. Lightboun produces the draught.]

Mr. *Plummer.* Is that your own handwriting, and the substance of the letter you sent to the Lord Chancellor?

Lightboun. It is my handwriting, and the substance of that letter.

Mr. *Plummer.* I desire it may be read.

[Mr. *Baily* reads the draught:]

"My lord;

"In obedience to your commands, I here lay before your lordship my thoughts upon the affair you were pleased to mention, when I had last the honour to wait upon your lordship; and must own, that a provision, for the demand upon Mr. Dormer's office, might answer our present purpose: but, with great submission, I think it concerns the honour of the Court of Chancery to find out some proper expedient to prevent the like accident for the future: and I beg leave to observe, that the great difficulty, which this gentleman has brought upon himself and the Court, proceeds not only from his squandering or misapplication of the Court-cash in his hands (were that all, his estate and office would much more than have answered the demand,) but I am afraid it is too obvious, that his power over the government securities, that had been transferred to, or brought before him, or upon which he had placed out the money of the suitors of the Court in his own name, has been the occasion of this great deficiency, which I hope may be provided for, and the credit of the Court retrieved and supported, by every Master's advancing 2,000*l.* or such other sum as shall be agreed on, out of the cash of the Court in his hands; which being placed out at interest, the yearly income thereof, together with the produce of Mr. Dormer's estate, will answer the demands that may be expected on his successor; and will, in due time, make good the debt upon the office, provided the money that has already, or may hereafter be raised, from his estate, or any other way, for that purpose, be forthwith applied to discharge such demands as carry interest, or be invested in such securities as have been disposed of by Mr. Dormer, belonging to the suitors, to answer the same and the accruing interest, which I hope the gentleman that succeeds him has already taken care of, if not, the demand will rather encrease than diminish.

"And having before observed, from whence this great deficiency has arose, I submit it to your lordship, whether the taking all government securities for the future, in the name of two or more Masters, may not prevent the like misfortune hereafter: and the deposit to be put out to interest, to raise a fund for the payment of Mr. Dormer's debt, together with our office, would, in a great measure, be a security for the cash with which we should then only be entrusted.

"I expect it will be objected, against the deposit, that some Masters may not always have that sum in their hands; but I will venture to say, it is scarce probable that can happen, if the money be directed as usual, to be brought before the Masters, both by your lordship and the Master of the Rolls, without which the

Masters can't think themselves much interested in the event of Mr. Dormer's affair.

"It may also be objected, that the alteration proposed, in the future taking government securities, will shew a distrust, and cause reflections upon the Masters; but I shall think it a happiness, to be divested of a power never to be used, without the greatest violation of the trust reposed in us that can well be imagined; and I think it evident, that it had been a much greater, if we had never been entrusted with it; and as this variation may be begun by ourselves, without any public direction or alteration in future orders, I think it will rather turn to our reputation than disadvantage, and will certainly ease the minds of the suitors, which ought to have some consideration in this affair. I am unwilling to trespass longer on your lordship's time; but if I have the happiness to have offered any thing thought practicable by your lordship, when I have the honour to be admitted to wait upon you, I hope to satisfy your lordship, that I shall, with pleasure, contribute, as becomes me, to facilitate any undertaking of this kind; and that I have as much at heart the reputation of the office I had the honour to be placed in by your lordship, as any of my brother Masters. But as we have different views, it is not surprizing that we think not alike; which makes me fear that nothing of this kind will be approved of, unless recommended by your lordship; and am, my lord, your lordship's most obedient servant,

"J. LIGHTBOUN."

Mr. *Plummer*. What date is it?

Lightboun. I did not expect when I wrote this letter, that I should have been called upon to give any account of it, and did not put any date to it; but to the best of my knowledge, it was in June, July, or August, 1722; but it is from circumstances I recollect that, rather than from any remembrance I have of the exact time.

Mr. *Lutwyche*. I only desire that Mr. Lightboun may recollect the time, when he first mentioned this to my lord Macclesfield, and this letter was taken notice of to him?

Lightboun. Indeed, my lords, I cannot do that, I believe it was at a meeting of several of the Masters, at my lord's house. I often had the honour to be admitted to him, with or without other Masters. His doors and ear were always open to me; and I was often troublesome to his lordship: But I cannot recollect the time, when this was first mentioned.

Mr. *Plummer*. I think he says the Masters might have different views. I desire he would explain himself, what he meant by that?

Lightboun. I meant by that to put my lord in mind of what I had said, when I had the honour to be with him last, when his lordship told me, that the proposal of a contribution came from the two senior Masters; I then said that their design was only to skin over this wound, till they could get out: That one of them had slipped his neck out of the collar already, and another was about getting out. I told his lordship, that, as I was but lately come into the office, I proposed to spend my days, or wear myself out in the service of the Court. Therefore, that their design was to get out, and mine to continue in, was what I meant by different views.

Mr. *Plummer*. Mr. Lightboun hath given your lordships an account of his proposals and arguments used with my Lord Chancellor; I desire to know, whether he used any other inducements to persuade my lord to make some orders relating to the Masters?

Lightboun. It was a long time before I heard any more of this affair. As they were quiet, without any application to me for the 500*l*. or to come into any contribution, which I was resolved against; so I did not think it prudent for me to make any bustle amongst my brethren. I thought I had done my duty, I had given my opinion when it was required, and I did not stir in it till the Masters apprehended themselves very much aggrieved, by the variation the Master of the Rolls was pleased to make in the practice of the Court, by directing all the money of the suitors to be brought before his usher, and sometimes to be put out by him without the Masters' approbation, which not only deprived the Masters of any advantage from thence, but of those fees that were due to them, on the receiving and placing out at interest, or paying it out again; and, as I took it, it no way answered the end, nor was for the benefit or security of the suitors: Because if the trust was too great, and the suitor's property not safe in eleven men's hands, much less was it safe in the hands of one. Therefore I apprehended there was reason for complaint. On this account we had several meetings; I was always ready to come into any representation to my lord, in hopes that grievances of all kinds might be looked into, and, I believe, often complained to my lord of these matters. We went to my Lord Chancellor, and acquainted him of our grievances; my lord desired us to put them into writing; we all readily concurred in that: accordingly we drew up our complaints of these, and other encroachments on our offices, by way of representation, which was delivered to my Lord Chancellor, and after my lord had had it some time, and nothing done, we frequently importuned my lord to consider the declining state of our offices; and I concluded that would bring the other matters on the stage, without which, nothing effectual could be done. My lord said he would have a conference with the Master of the Rolls, and the Masters, in order to debate these matters; and I did not doubt, but, upon that occasion, the deficiency of Dormer's would come out, and that something might be done for us, consistent with the honour of the court, and the suitors' safety. But that conference was delayed; the grievances in all respects grew greater; we grew more troublesome to my Lord Chancellor; my lord then said there was a necessity of redressing all the

grievances; he mentioned the Masters giving security, that of taking securities for the suitors in other people's names, and continuing the Masters in the enjoyment of their offices, as they had used to have them, and said it would be best to do all together. With this we were put off for some time, but, on further solicitation, my lord said he was now determined to do something in this affair, and his lordship desired a more particular account of the grievances complained of by the Masters, and their reasons, and the inconveniences to the suitors that accrued from the new methods, which the Master of the Rolls had turned the business of the Court into; and that the matter, both with respect to the suitors and the Masters, might be fully understood, his lordship pressed, that something of that kind might be drawn up in writing and laid before him, and he would make orders proper to make a thorough reformation in the Court: And I remember his expression to me was, it would save him much trouble, if what was drawn up by the Masters not only contained the things which they had grounds to complain of, but was put into the form of orders necessary to be made for him to consider of, and alter, and add such others as he had prepared or thought necessary. And soon after, a second representation was prepared, and was delivered to my lord. And after his lordship had had it some short time there was a meeting at my Lord Chancellor's, where the Master of the Rolls and the Masters were present, and, at that time, there was a good deal of discourse about the money. But when the Master of the Rolls began the topic of his jurisdiction, exclusive of the king's commission, heats arose, and little was done at that meeting. I think some persons of quality came to speak with my lord, and that broke it up. I was soon afterwards with my lord, and I asked his lordship what he intended to do: He said he was sorry matters were got to that height, but that he found if the Masters would give up the judicature, they might be made easy in their demands, and things put upon the old foot, and the suitors made safe too. Upon that occasion, I did take the liberty to say, if there was a judicial power in the Masters by virtue of the king's commission, as it was his majesty's prerogative to grant, we could not give it up; and that, for my part, I would not exchange or barter it for the custody of the suitors' money. I believe my lord proposed, at this meeting, to have had the assistance of the Master of the Rolls in making these intended orders: and I recollect, that after the deficiency of this last representation, which I was present at, I heard that my lord had shewn it to the Master of the Rolls before the meeting, which I took amiss, my lord desiring it for his own private use: upon which I went to him in order to withdraw it, and told him it was done in such haste, that all the Masters had not considered it; but whether I alleged to him, or he to me, I don't remember, but it was said, that it was very proper the Masters should all sign it; and I think I carried it back to the Masters, and that we all signed it; and then it was delivered back to my lord. And I believe, upon the face of that representation it will appear, that it was drawn up at my Lord Chancellor's request.

The first representation was chiefly confined to such grievances as affected ourselves, the second is more at large; I don't know whether his lordship will produce it. Some things in it may seem to bear hard upon his honour, the Master of the Rolls, and may give offence; but it will be considered, that it was written at a time when there were great differences between the Master of the Rolls and the Masters: nay, I think I may say, the whole Court of Chancery was in a state of war.

Mr. *Plumner*. I desire he may be asked, if he ever laid before my Lord Chancellor the expectations of the world: that he would reform these abuses and grievances?

Lightboun. I have often mentioned that to my lord, and pressed it rather more and oftener than became me. I was ashamed to be so troublesome, and I was surprised that my lord did not do something in it; though I soon found, and have often told one or other of the Masters and others, that my lord would do nothing in it. However, I continued to persevere in pressing it; and expressly mentioned the great inconveniences the Court would be run into for want of a proper regulation, and with what an ill grace we could apply to his successors to redress these grievances, in case his lordship grew weary of the fatigue of business, and quitted the great seal; that they would tell us, we had long acquiesced under them, and that his lordship not having so much as looked into them, they would not care to meddle or interfere in it. I pressed it home to his lordship, and thought he made doubts and difficulties where there were none. Indeed I thought in this his lordship wanted his usual resolution, and almost ventured to say so. I know not whether it is very proper to mention it, but I did take the liberty to tell his lordship, that if he did not redress these grievances, unless my lord Lechmere succeeded him, I despaired of seeing them settled on any better foot. I hope my lord will pardon my mentioning his name.

Serj. *Peng*. My lords, we have done with Mr. Lightboun.

Serj. *Probyn*. I desire he may be asked, when the first application was made by the Masters to redress their grievances?

Lightboun. I really can't tell. I went so frequently to my lord, that I cannot distinguish one time from another; I believe other Masters that went seldomer can tell better; but I believe it must be a year and a half, or two years ago, or more; I cannot tell the time.

Serj. *Probyn*. I desire he may be asked, whether there was any second application, before the representation was put into writing?

Lightboun. Immediately upon the Master of the Rolls's varying the method of the Court, and directing the money to be paid in to the

usher, the Masters went to my Lord Chancellor's, which I believe must be before Christmas, 1722. I believe Mr. Holford remembers it better; and that from time to time, I have often told him that my Lord Chancellor would do nothing in it.

Serj. *Probyn.* I desire to ask him, when that meeting was between the late Lord Chancellor and the Master of the Rolls?

Lightboun. That I believe was the beginning of last summer.

Serj. *Probyn.* We desire he may say who was then present at that meeting with the Master of the Rolls?

Lightboun. My lords, at that meeting with the Master of the Rolls the Lord Chancellor was there, had the great seal before him; and the two senior Registers were there, with pen, ink, and paper before them, in proper habits; the Master of the Rolls, and all the Masters in their gowns; and the secretary was there, and the Masters all hoped the orders were to be then pronounced; but I can't remember that the Registers set pen to paper. The Usher was likewise there.

Serj. *Probyn.* I desire he may, if he can recollect it, give a particular account of what passed at that meeting.

Lightboun. The Masters insisted they had a right by custom to have the money brought before them, where there was any reference to a Master, whether it was by orders made upon hearing, or by interlocutory orders, or if there was a direction in that order, by which the money was brought in for the payment or application of it; in these cases they alleged, that the money had, time out of mind, been brought before the Master, to whom the reference was directed; and they did admit that where money was brought against bills of interpleader or interlocutory orders, where there was no reference to a Master, the money had usually been directed to be brought into Court, in order to be kept till it could be determined whose it was, or to what use it was to be applied? And there they admitted the money was formerly kept by the Usher. This I apprehended was insisted upon by the Masters as their undoubted right, and it was expected an order would have been then made declaring it so.

Serj. *Probyn.* I desire to know what further passed relating to facts only, without any account of his own expectations?

Lightboun. Some debate arose about the Master of the Rolls's judicature, started I think first by himself.

E. of *Macc.* I desire to put Mr. Lightboun in mind of some things, and first to ask him, whether upon that application they had made to me in relation to the alteration or variation, as he calls it, in the practice of the Court, by the orders made by the Master of the Rolls, whether I did not require them to lay precedents before me, that I might be satisfied how that matter stood?

Lightboun. Your lordship did; but it was long before that meeting, I believe a year and more.

E. of *Macc.* Whether there had not been like directions, that the Usher should lay precedents before me?

Lightboun. I don't know of any such directions to him, but I remember my Lord Chancellor called for his precedents, and wondered he had not brought them, if he had any for his purpose.

E. of *Macc.* I desire Mr. Lightboun may recollect whether the question was not put to the Usher with relation to the usage of the Court, to put the money into the Master's hands, in all cases where the money was brought into Court, to be disposed of, either to be put out at interest, or paid to creditors or legatees, whether he had any one precedent to the contrary?

Lightboun. I remember he had none, and I apprehended the Usher did not make out any sort of claim to keep such money.

E. of *Macc.* I don't ask what the Usher made out, but what questions were asked him about the usage and precedents?

Lightboun. I believe they were asked for, and I am sure he then produced none.

E. of *Macc.* Pray, recollect, and consider; did I speak to him as to one that had not any precedents to produce; or did I make mention as if he had brought precedents, and ask him if he could say, that among those precedents there was one to the purpose, to make out that the usage was not so?

Lightboun. I say your lordship blamed him for not bringing these precedents: I believe your lordship asked him, if he could bring any precedent to the point? And, to the best of my remembrance, he said he had none, or gave no satisfactory answer, but such as I thought evasive; but I cannot remember particularly what your lordship and he said to each other.

E. of *Macc.* This is a very indifferent account; since Mr. Lightboun hath so good a memory, I desire to know whether the Usher was not told, that his precedents had been read, and possibly I might have overlooked some that were material; and therefore desired him to shew whether there was among them any one precedent, that related to money brought in in these cases?

Lightboun. He produced none.

E. of *Macc.* Did it not appear that he had produced precedents before, and they had been read, and that possibly I might have overlooked some of them?

Lightboun. On your lordship's mentioning of it, I do recollect something did appear, that your lordship had seen his precedents, and did expect he should have brought more.

E. of *Macc.* I desire he may be asked, whether he did pretend he could produce more?

Lightboun. My lords, I cannot be particular in that.

E. of *Macc.* I desire to know whether he did not own that he had no such precedents?

Lightboun. In answer to that, my lords, I cannot say positively he did or did not; for I believe I have seen some few orders of ancient dates, that were precedents of money

them deputy governor of the Bank, having been appointed and desired by the said committee, to inspect and examine the said accompts, and who have proceeded so to do, and after having been several times attended by the said Masters, have made a report thereof to the said committee of council; whereby it appears, that, though all the Masters of the said Court have produced before them all the securities and certificates of their having the stock and annuities in their names; which, upon their accompts, they appear to be chargeable with as belonging to the suitors of the Court, and much the greater part of the Masters have brought before the said Mr baron Gilbert, and other persons above named, their cash or securities easily convertible into money, certificates of stock, and annuities sufficient to make good the balance of their accompts: yet upon the said report it appears that there are yet considerable deficiencies of monies, which were in the hands of some Masters, who are dead; and that some of the present Masters have not produced the balance of their cash, nor given a satisfactory account how the same is to be made good, and it not having been usual for the Masters of the said Court to give security for the money in their hands, the said committee thought advisable, that till this affair could be more maturely considered, and proper methods established for security of the suitors of the said Court, the effects herein after-mentioned, which have upon this occasion been produced, should be at present secured in the manner herein aftermentioned, and recommended to the right honourable the Lord Chancellor, to take such order therein as should be proper; all which being communicated to all the said Masters, and the said report now read in the presence of them all, except Mr. Kynaston, who is indisposed, and thereby prevented from attending; and upon hearing what was alleged by the said Masters, are the facts of the said report, so far as concern their respective securities in their hands and power, and the balance of cash in their hands not being controverted, his lordship therefore doth think fit, and so order, that the said Masters, Mr. Holford, Mr. Lovibond, Mr. John Bennet, Mr. Godfrey, Mr. Lightboun, Mr. Conway, Mr. Edwards, Mr. Thomas Bennet, Mr. Elde, and Mr. Thurston, all now present, and likewise Mr. Kynaston, do forthwith prepare and send to the Bank of England, every one a chest with one lock, and hasps for two padlocks; the key of the lock to be kept by the Master, and the key of one of the padlocks by Mr. Smith, and Mr. Malthus, two of the six clerks of this Court, or one of them, and the key of the other by the governor, deputy governor or cashier of the Bank; and that all the bonds, exchequer annuities and orders, and other securities given in upon their said accompts, as securities belonging to the suitors of this Court, or as the proper securities of the said Masters, towards making good the balance of their respective cash; and likewise the Bank notes and cash so given in, and not since paid to, or laid out for the suitors of the Court, be deposited in the said chests, under the inspection of Mr. baron Gilbert, and the other persons appointed, as aforesaid, to inspect the Master's accompts, or of some of them; and that then the chests be locked up, and left in the custody of the Bank of England; but so to be kept, as that the Masters may have easy access thereto, to comply with the orders of this Court, till further order may be taken concerning the same; and whereas the Masters have in their several accompts given in particulars of stock, and of annuities, transferable in the books of the several companies, standing in their names, which belong to the several suitors of this Court, or as their own proper stock and annuities, by which part of the balance of cash in their hands may be made good or secured; it is further ordered, that they do each of them forthwith deliver into the respective company, a declaration in writing, wherein such stock in each respective company, or the annuities there transferable, as by their respective accompts, appear to belong to the suitors of the Court, and likewise the stock and annuities by them respectively proposed toward making good, or securing their balance of cash, or so much thereof, as shall equal the balance of their said accompt; in case they have in their names more than sufficient for that purpose, it shall be declared to be upon trust, to attend the orders of this Court; and the said respective companies are to take care, that proper entries be made thereof in their books, so that such stock or annuities be not transferred, but by order or leave of this Court; and the said Masters, upon performing the order above, are to take proper certificates, signed by Mr. baron Gilbert, and the other persons appointed as aforesaid, to inspect the said accompts, or some of them; and by the persons keeping the keys of the said chests, of the particulars of the bonds, or other securities, cash and notes, deposited or locked up in such chests, as aforesaid, and certificates signed by the same persons, and by a proper officer of the Bank, that such chests are deposited in the Bank, and certificates signed by the proper officers of the respective companies, of the declarations made as aforesaid, by the respective Masters, and of the entries thereof; and it is further ordered that the Goldsmiths' notes, produced by the said Masters, in giving in their accompts, be by them turned into Bank notes, and so deposited as aforesaid; and the said several Masters are forthwith to give Mr. baron Gilbert post-accompts of their receipt and payments, since the former accompts, and a copy hereof is to be delivered to Mr. Kynaston, he not being now present; and another copy left at the public office of the Masters, with their clerk there, for their more easy recourse thereto, in order to their exact compliance therewith.

"EDW. GOLDESBROUGH, Dep. Reg."

Serj. *Peng.* By this order your lordships will observe, that some of the insuperable difficulties were surmounted, and some of the evils

cured; and though that method will not take it totally out of the power of the Masters, yet why the noble lord could not have proceeded so far before, is left to your lordships' determination; we shall not call any farther witnesses on these Articles, we apprehend we have fully made them out. The honourable gentleman who opens the next Article will proceed.

Lord *Morpeth.* My lords, it falls to my lot, to open to your lordships the Nineteenth Article of this Impeachment, and, it being some time since it was read at your table, it will be necessary for me shortly to recollect it.

The Article charges, "That his majesty having, in November last, directed an enquiry into the accounts of the Masters, to the intent that proper methods should be taken for the security of the suitors, the earl of Macclesfield, being then Lord Chancellor and one of the privy council, in order to obstruct the same, and to prevent a parliamentary enquiry into the condition of the offices of the Masters, did, in the first place, advise the Masters to assist each other with money and effects; and for their encouragement, represented to them, that it would be for their honour and service to appear able and sufficient, and that if they made a bold stand now, it would prevent a parliamentary enquiry. In the next place, that the Earl persuaded several of them, to make false representations of their circumstances to his majesty, by adding a subscription to their accounts, that they were able and willing to answer the effects in their hands, though the Earl then knew, or had good reason to believe the contrary; and that several of the Masters, according to the Earl's advice, did supply others with money and effects, to make a false shew, and appearance of their abilities."

Your lordships take notice, that the time mentioned in the Article is November last; at which time, and for some years before, the kingdom had rang of the abuses and corruptions of the Court of Chancery, with little hopes of redress, but from the justice of parliament: the Earl could not but foresee, that the period was then drawing near, when the cries of the oppressed, and the universal dissatisfaction raised against his administration, would some way or other force its relief.

This cry for justice having reached his majesty's ear, he was pleased to direct the enquiry mentioned in the Article, and whilst this was depending, the impeached lord finished that scheme of iniquity he had carried on so long without controul.

The facts charged in this Article contain in themselves the vilest deceit and treachery; heightened and aggravated by the wicked purposes for which they were contrived; First, To have misled the council-board into a groundless belief of the Masters' sufficiency to answer the suitors; and on this foundation he built a more impious but more fatal project, the preventing a parliamentary enquiry.

The Answer given by the Earl to this Article deserves a particular notice: he says, "That upon great consideration of Dormer's deficiency, and the danger there might be of further inconveniencies with relation to the suitors' effects, of some disputes in the Court, and of some practices of the Masters, which he thought ought to be reformed, he was convinced, it was a work of too great consequence, for him singly to attempt; and being highly sensible of his most sacred majesty's paternal goodness, did presume humbly to beseech his majesty, as the fountain of justice, to depute some of his privy council to take the matters into consideration."

My lords, seven years and more had passed since he was made Lord Chancellor, three years since Dormer's deficiency, without one honest thought, for any thing that has yet appeared, or one sincere step taken by him, for the honour of the Court, or the safety of the suitors. If the examination ordered by his majesty did spring from his lordship's request, his real intention, in desiring it, will be best known from his former conduct, and from the use, we shall prove, he intended to have made of that inquiry; his past behaviour has already appeared to your lordships to have been a series of extortion and oppression, constantly attended with the vilest and meanest artifices to keep it secret; the king's paternal goodness was most notoriously abused, by him who was intrusted to dispense it; and that fountain of justice polluted, which he now dares to name in his defence.

I think myself justified in charging this part of his defence as an act of high dissimulation before your lordships; and a presumptuous attempt to cover his own guilt under his majesty's sacred name, and the orders he was pleased to give for that enquiry. The Earl has, indeed, acknowledged one truth in this part of his Answer, "That the great deficiencies and danger to the suitors, and the practices of the Masters (which he does not name, but says) ought to be reformed, had convinced him, that the reformation of them was a work too great for him, singly, to attempt."

My lords, the many prostitutions of the dignity of the great office, which have been proved upon him, had doubtless greatly wounded the honour and authority of the Court itself; and the Earl had bound himself so fast to those Masters, whom he had admitted by the bands of corruption, which he had not power to break through, that nothing which tended to the honour of that high Court, or the advantage of the suitors, could be expected from his hands.

The next passage of his Answer is a wretched mixture of the most abject flattery of such of your lordships as attended that committee, to whom, I believe, his lordship very truly declares, he was entirely subservient; and of false praises of himself, for the great services he contributed to that enquiry: However, after this introduction, the Answer goes on and declares, "That he is greatly surprised, to find

himself charged with obstructing the taking those accounts, which he had thus desired might be taken, and had promoted with all his power."

This is a poor evasion and affectation of innocence; and the more surprising to come from his lordship, whose misconduct had so notoriously been the occasion of that enquiry. And the Charge is not, as he insinuates, for obstructing the taking the accounts, but for procuring false accounts and representations to be laid before the council, by which means that enquiry might have been frustrated.

But he proceeds in his Answer to a declaration, the most astonishing of all others, "That he never thought of preventing a parliamentary enquiry, any otherwise, than by making it unnecessary, and procuring to the suitors a full redress of all their grievances, and rectifying whatever he found amiss; and that he looked upon to be his duty, and begs leave to say it here, once for all, in answer to all the insinuations of that kind contained in any of the Articles."

By the last words, the Earl, in a very summary manner, pronounces his own acquittal; but your lordships will observe, that the Article charges him, in plain words, with actual advising the Masters to misrepresent their accounts, in order to prevent a parliamentary enquiry, and that, if they made a bold stand now, it might prevent one: His lordship answers, that he never thought of preventing it, otherwise than by procuring full redress, &c.

By this he confesses, he did think of preventing the inquiry of parliament.

He has not dared to deny the facts charged, from which this design was manifest, because he knew they would be fully proved: But the subterfuge he flies to, viz. that he did intend to prevent it, by rendering it unnecessary, is impossible to be believed, though the Commons should offer no proofs at all to this part of the Article; unless his lordship imagines that he is able to carry on the imposition so far, as that the concealing from his majesty the true condition of the suitors, by the methods he was then practising with the Masters, should be taken by your lordships to be the means of procuring them full redress; and it is self-evident, that if his contrivance had taken place, the immediate and full relief of the suitors, which was his majesty's gracious purpose, had thereby been wholly defeated: The Commons, therefore, may insist upon it, that this flagrant circumstance is established by his own confession, especially since your lordships find, that in the following parts of his Answer, the Earl declares, "That Mr. Holford having subscribed his accounts, with a declaration of his abilities, and readiness to answer the suitors; and some of the Masters having used expressions, as he thought, not so proper, others of them having made no conclusions at all; he did advise them all to write the same words under their accounts as Mr. Holford had done, and did tell them, in great sincerity and friendship, that, at a time when so many men's mouths were open against them as insolvent, it would be for their honour and interest to make it appear that they were able."

Thus far the Answer is a full confession, that he advised all the Masters to add Mr. Holford's conclusion to their accounts.

His lordship says, he was induced to do this from their assuring him they were able; this assertion will appear to be notoriously false: however, if it had been true, his lordship, it seems, took their bare words for it, at the same time that he declared to them, that so many men's mouths were open against them as insolvent: But here, unhappy man, he flies again for sanctuary to the integrity of his own heart, and assures your lordships, "That he never thought of a contrivance to have them deceitfully appear to be really what they were not;" though this declaration of the innocence of his mind stands also in direct contradiction to the fact he had just before confessed; and in the very next lines he again confesses, that some of the Masters, pursuant to his own directions, did withdraw to add the same words to their accounts, as Mr. Holford had done to his; which he carried to the council without looking into them; and, when they were read there, the Masters, it seems, were honester men than the Earl expected, or would have had them to be; for, notwithstanding his advice, all of them did not make these subscriptions to their accounts.

To the other charge in the Article, of his advising them to stand by one another and appear able, his lordship has given a particular answer, "That an order being made upon the Masters, to produce their securities and cash, and the Masters complaining of the short time to produce such great sums, he confesses he did say, that he required them to bestir themselves; and might say, that some of their brethren might perhaps be able to let them have money, till they could raise it another way."

The excuse he offers for this advice is a very unjustifiable one; it is, that the Masters declared to him, that they had not the suitors' effects ready, which, by the duty of their offices, his lordship knew they ought to have had, but had effects sufficient to raise the whole, if they could have had more time. By his own account of this matter it is plain, that the Masters did at that time disclose to him one of the practices, which it was his duty to have reformed: and yet your lordships see what consideration he had of it; even at this juncture he advised them to supply one another, which they accordingly did, and the deceit prevailed, till the order for carrying the securities and cash to the Bank made the discovery.

Perhaps, my lords, I have dwelt too long on the Earl's Answer; but, I think, it will appear to your lordships to betray such a confusion of mind, as nothing but the heaviest pressures of guilt could have produced, and is a stronger conviction of him than a thousand witnesses.

I will, in the next place, give some short ac-

count of our evidence to this Article. The Masters themselves will prove the Earl's directions, either given by his own mouth, or by his secretary's, when they were required to make up their accounts to be laid before the king in council, that they should stand by one another, and give the best account they could, to prevent a parliamentary enquiry, and that they need only to produce or shew Bank or Goldsmiths' notes; and that it was a critical juncture, and that the strong should assist the weak, and that they must make a stand, and defeat the designs of their enemies.

We shall further prove his lordship's express directions to the Masters, to add the same conclusion to their accounts, as Mr. Holford had done to his, which was, that they were able and ready to answer their balances: though the Earl did not so much as ask any of them whether they could make it good, and some of them declared the contrary; and at that time also he told them, that it would be for their honour and service, and that it would look well to the council to appear able and willing.

We shall also prove, that this false advice of the Earl was followed by several of the Masters, in both respects; and that afterwards, when the suitors' effects were to be carried into the Bank, several of them who had before appeared able, now proved deficient in great sums, and Bank and Goldsmiths' notes, and other effects, to a great value, with which several of them had been accommodated, and which they had produced to the persons appointed to examine the accounts; and which, as appears by the reports on your lordships' table, they had sworn to be their own, and not lent them for the purpose of accounting, now vanished, and a deficiency appeared of fourscore thousand pounds and upwards, which still continues.

This evidence will fully maintain our Article, and, if any proof is necessary, will sufficiently clear up the Earl's intentions.

My lords, the part which still remains to me is such, as I own myself utterly unable to perform; I mean, to aggravate this offence in such manner as it deserves; the amazing scene this Article has opened, must not be judged of singly, and by itself; nor can it be accounted for but as the offspring of a mind thoroughly debased, and flowing from the most incurable corruption: and though they have issued from that source, as from an unexhaustible fountain, yet it can't be denied, but as the Earl's thirst for lucre grew stronger upon him, with that his invention also has constantly improved into some new device or management for securing his exorbitant advantages by preserving the secret. It was a remarkable law in one of the wisest of the Grecian governments, arising from their dread and abhorrence of a corrupt judge, that no man bred up to merchandize should be admitted into any office of judicature, till he had quitted that employment for at least ten years; and the reason was, because the fingers of merchants had been too much used to traffic.

The Earl's administration, in the highest seat of justice in this kingdom, has appeared to your lordships to have been one continued piratical trade; during the course of which, from time to time, as opportunities have offered, he has preyed alike upon Masters and suitors; his craving appetite was in no sort checked by the approach of death itself; and the hand of a dying chancellor, as he expressed himself to one of the Masters, was opened to receive that unjust gain he had so plentifully fed upon in full health: to which, and his other misbehaviours, your lordships now see, that not only the ruin of many, even of the Masters, but the dishonour, distress, and confusion still remaining in that part of the public justice must be imputed; and how groundless and unaccountable soever the repeated assertions in the Earl's Answer, that the Masters freely and voluntarily parted with their money to him, now appear to be; yet, from the unwillingness and other conscious circumstances, with which he has since, at several times, refunded some part of his extorsive gains, though the guilt is not lessened, his lordship is thereby self-condemned.

The fund out of which he has raised his unwarrantable profits, ought to have been held by him as sacred and inviolable, being deposited in the sanctuary of his own Court: his extortions therefore must be judged of, not as private violations of property, but as a pillage taken from the treasure of the public; the livelihood of the widow and fatherless under the protection of the law in a court of justice; great part of it, perhaps, dedicated to charities: and how far your lordships may, in this respect, consider it as a sacrilegious plunder, is left to your judgment: however, the injuries done to distressed ship-wrecked sufferers, have been always esteemed the highest barbarity.

But the methods the Earl has used, from time to time, to excuse and cover his crimes, though they were the natural refuge of an obstinate, unrelenting mind, yet are more heinous than the crimes themselves. Your lordships can't forget the oath of his office, which he has set forth at large in his Answer; he was sworn to do right to all manner of people, poor and rich, according to the laws and usages of the realm, and not to do or suffer the hurt of the king, if he could hinder it; if not, clearly and expressly to make it known to him, with his true advice and counsel. It is surprizing to find his lordship to have so utterly abandoned all regard to this solemn obligation, as the whole course of his behaviour fully demonstrates. You have also heard the oath he caused to be administered to the Masters, immediately after he had shared with them the estates of the suitors; by which oath they were likewise sworn neither to do hurt to the king, nor to do any fraud to the hurt of any of the people; and it has appeared in what manner they have since been practised and tampered with by the Earl himself, in order to conceal and suppress the knowledge of the grievances of the subject,

which he had procured; sometimes they were threatened, at other times cajoled and seduced; but always deceived; and this artifice, disclosed by this Article, was his last shift. When he saw the storm began to arise, he deliberately contrived to turn the fatherly goodness of his bountiful master to the destruction of his people, and, by this most unparalleled attempt, to have rendered the throne itself the shelter of his iniquities, and accessary to his oppressions; but it will now appear, that this was conducted to another point, to screen himself from the justice of parliament.

My lords, there have been crimes so unexampled, and of so horrid a nature, that the malefactors have been tried at midnight, and immediately drowned, and the journal books burnt, in compassion to mankind, that the memory of the proceeding being destroyed, the crime itself might not be propagated.

The offences of the impeached lord are ripened to a fullness surpassing all belief, too big indeed for the ordinary hand of justice; but the Commons of Great Britain, whose enquiry he vainly flattered himself he could prevent (though the terrors of it had long lain upon his breast,) have by this time, I presume, convinced his lordship; and his example will, I hope, convince the world, that no offender, how great or subtle soever, can escape their justice, of which this public proceeding will be an eternal monument, as well as of the shame of the unfortunate earl.

The lord Bacon,* one of his predecessors, made a frank submission to your lordships' ancestors upon the accusation of the Commons, and taking comfort to himself from his afflictions, uses these words, 'That hereafter the greatness of a judge or magistrate shall be no sanctuary or protection to him against guilt; and that, after his example, it was like that judges would fly from any thing in the likeness of corruption, though at a great distance; which tends to purging the courts of justice, and reducing them to their true honour and splendour.' He did, indeed, urge it as no small excuse for himself, that bribery and corruption, the vices of which he stood impeached, were the vices of the times; but the Commons rejoice to find, that the Earl now before your lordships in judgment, has no ground to claim the same excuse.

The admonitions left by that penitent, great man, and the just punishment he underwent, have, I believe, conduced to prevent the like evil for near an hundred years, though they had not an immediate effect: for an eminent historian of those times has recorded, that some time after his sentence in parliament, meeting the earl of Middlesex, then lord treasurer (whom he had ground to suspect to have been instrumental in his disgrace,) in discourse with him, he recommended it as a rule to be observed by the earl, and all great officers, to

"Remember a Parliament will come."

* See his Case, vol. 2, p. 1087.

And the same author farther observes, that though the lord Bacon had not the spirit of divination, and though the treasurer despised and laughed at his advice, yet, within two years after, the treasurer also was condemned in parliament for bribery, extortions, oppressions, and other grievous misdemeanours.

I will conclude with one observation more: it may, my lords, be too justly apprehended, that the most dangerous symptoms of a declining commonwealth do then appear, when men in the highest stations in government, especially those which concern the administration of justice, shall be so far lost to all sense of virtue, as to be guilty of such odious crimes as those now charged upon the Earl; yet we promise ourselves, that your lordships' justice, in the punishment of those crimes, will afford us a hopeful prospect of a reviving state; and that whenever the crimes and misdemeanours of this unfortunate earl shall hereafter be mentioned, it will be remembered at the same time, for the honour of your lordships, and the benefit of the whole nation, that he received a condemnation suitable to his guilt.

Mr. Snell. My lords, I would gladly have been excused this service, because I have been extremely indisposed, ever since I received the commands of the House of Commons, and because I am otherwise truly sensible of my inability to execute those commands in the manner they ought to be executed. But these reasons being thought insufficient by others to prevail for my absence, it is no longer a matter of choice, and I must comply with the duty imposed upon me. Your lordships, therefore, will be pleased to consider, (as the truth is), that what I have to say is only the product of a few hours, and that it is impossible for me, in so short a time to offer any observations, any arguments, but such as will appear crude and indigested on this great and important subject.

The Earl then, at the bar stands under an Impeachment of all the Commons of Great Britain, of High Crimes and Misdemeanors in his late office of Lord High Chancellor, and though the Charge against him in the Article now under your lordships' consideration be of a different nature, yet in every circumstance it is as highly criminal as any of those that have gone before it. The accusation hitherto has generally run upon corruption in the sale of offices, extortion, and a series of foul practices to cover and conceal the deficiency in Dormer's office, which had drawn upon him an universal cry for redress. All the little arts that had been played over and over again upon the Masters, either by applying to their hopes, or fears, as opportunity offered, had proved ineffectual; and some other expedient must be found out, some new stratagem invented, to quiet the clamours of the injured suiters. These clamours had justly arisen from a supposition of the Masters' insolvency, and no method could be so likely to serve his turn to appease them, as one that would make the Masters seem to

be insolvent. He therefore ventured to advise them to assist one another, to represent their circumstances in a false light, by subscribing their accounts as Mr. Holford had done; and thus he proposed to deceive the suitors, and to make the Masters appear to the world able to answer the monies and effects in their hands: but this last effort was as unsuccessful as his former. For if the Masters were able and sufficient, what reason could he have for his apprehensions of a parliamentary enquiry? If they were not able, he had indeed reason for such apprehensions, which leaves your lordships no room to doubt, but that this advice was given with a view only to keep the affair out of parliament; and the constant anxiety he laboured under to secure that main point, does more than decypher the secret of the whole transaction.

Now, my lords, this extraordinary step could not proceed from any doubt the Earl could have, whether the parliament was able and willing to redress these grievances and inconveniences, or whether it would contribute its assistance to the relief of the suitors: No, my lords, he knew very well that the parliament was the proper place for redressing abuses in the courts of justice. He was sensible too, that it had always interposed with Accusations and Impeachments, and that ill actions had, in no age, met with favour there. He could have no hopes that his ambiguity of expression, his dexterity in playing upon words, in wresting their proper sense and meaning, could stand him in any stead; or that all his subtilty could be a match for the wisdom of the legislature: but, perhaps, he might imagine, that a committee of council might be wrought upon, and misled by appearances, at least so far as to protract the evil day; and who could tell what time or accident might bring about? Another Act of Grace might come, and expunge the whole score.

I should have congratulated your lordships and the House of Commons, and even the accused earl himself, if the just apprehensions he conceived of a parliamentary enquiry had raised in him a compassion equal to the sufferings of the suitors: if it had begot a repentance of his former misdeeds and crimes, and a resolution of future innocence and uprightness: but your lordships find it had a very different effect; it only produced a vile contrivance to guard himself against punishment for what was past, and to make it more difficult hereafter to detect him in the same practices. This is a behaviour, my lords, which is so far from deserving your mercy, that it calls aloud for your indignation as well as justice. This is a circumstance which is not only a high aggravation of his guilt, but a great indignity to the authority and honour of parliament; which, I hope, will never be eluded by the artifice of the most cunning and skilful, nor controuled by the influence of the most powerful and favoured minister of state.

But if the impeached earl's actions may be allowed to be any proof of his intentions, the fact stated in this Article goes further, and implies a bold and desperate attempt to mislead his majesty, and to obstruct his gracious endeavours to find out proper methods for securing the money and effects of the suitors, which is an instance on one hand of his baseness and ingratitude to his sovereign, to whom he owed every thing; on the other, of his injustice and barbarity to those of his fellow-subjects, whom he had injured, whom he had oppressed, during the whole course of his tyrannic administration.

What, my lords, must have been the consequence, if this contrivance had passed? And it would have passed upon a prince of less discernment than his majesty. Whenever it had been discovered, all the obloquy would have been thrown upon his sacred person, as if he had been engaged in a confederacy to skreen that guilt which he was labouring to detect. But the Earl's avaricious temper had set so wrong a bias upon his actions, that the means by which he proposed to shelter himself, and to conceal his depredations, have brought upon him (what he so long dreaded) this just and necessary prosecution.

As to the Earl's Answer to this Article, I hope I may be excused the liberty of saying, that it is either vain, evasive, or false.

He begins with enumerating the many inconveniences and abuses, which he thought necessary to be reformed in the Court of Chancery, and with assuring your lordships of his good intentions to contribute to the reformation of them; but your lordships will best judge of this pretended zeal, and of the sincerity and candour with which it is urged, by considering the constant tenor of his actions, by examining whether he can produce any instance of his having endeavoured to correct these abuses, or to remove these inconveniences. Now, I don't find, through his whole Answer, nor have I heard it asserted, that he ever attempted any thing of that kind. On the contrary, it is too apparent, that many of them took their rise while he presided in Chancery.

In the next place, my lords, he arrogates to himself the merit of that enquiry, which his majesty had directed to be made by a committee of his privy council; and insists, that it was the effect of his application.

How true this assertion is, some of your lordships may know. But the part he acted in that enquiry might have obliged him to silence, or at least have restrained him from boasting of his conduct. The Commons charge him directly with obstructing the methods then proposed for securing the property of the suitors; and it is not a sufficient answer to say, that this enquiry was begun at his instance, and that he pressed the Masters to bring in their accompts: for all this may be true, and yet he might give them the advice I have already mentioned, and complained of to your lordships. Surely, my lords, it is a justice due to his majesty, to observe, upon this vain-glorious part of the Earl's Answer, that whatever share he had in setting this enquiry on foot, all the good fruits to be

hoped for from it are the result only of his majesty's paternal care of his people.

He further says, that he never thought of preventing a parliamentary enquiry, any other way than by making it unnecessary, and by procuring the suitors a full redress of all their grievances, &c.

This is another instance of his disingenuity: for the grievances complained of, could no where be redressed but in parliament; and therefore nothing more can be understood by the words [any other ways than by making it unnecessary] than by making it seem unnecessary; which is a poor and mean prevarication.

Nor is there any credit to be given to what he urges in excuse of his fraudulent proposal to the Masters, viz. That while the accompts were taking, all the Masters, at least all that he saw, except Mr. Kynaston, had declared that they had effects sufficient to answer their whole accompts, &c.

For we shall prove to your lordships by Mr. Thomas Bennet, and Mr. Kynaston, that it is false, unless you'll suppose them perjured: for they are very positive, that the Earl never asked them whether they had effects to answer, or not, or were able to pay in their cash-balance: nay, they are sure they did not tell him so, because in fact it would have been false if they had.

Besides, your lordships will have the concurrent testimony of almost all the Masters to prove, that (while they were making up their accompts to lay before the committee of council) they were directed by Cottingham and Dixon to assist one another in making a shew of their abilities; and that some of them, viz. Mr. John Bennet, Mr. Godfrey, and Mr. Conway, complied with this direction, which we must ascribe to the Earl himself, as being given by his two chief agents and ministers.

Who is it, my lords, that has been guilty of the crimes laid in this Impeachment? It is a peer of parliament! a Lord High Chancellor of Great Britain! and how precarious must be the property, how deplorable the condition of the subjects of this kingdom, if such crimes should not be punished in so exemplary a manner, as to carry down terror to all succeeding chancellors?

My lords, if I have expressed myself with too much acrimony on this occasion; if what I have said has any way offended the impeached Earl, I hope he will do me the justice to believe, that I meant it only in detestation of his crimes, and not in disrespect to his person. For I assure him I should have been heartily sorry for the misfortune he has brought upon himself, if it had proceeded from ignorance or neglect, and not from an insatiable appetite after illegal gains, which he is pleased to mis-call voluntary presents, and for which I must ever entertain the utmost abhorrence. I will therefore conclude with a word of advice out of the Scripture for his future conduct, "That he shall receive no gift; for a gift blindeth the wise, and perverteth the words of the righteous."

Serj. *Pengelly.* My lords, we beg leave that Mr. Thomas Bennet may be examined, and that he may give your lordships an account of what passed after this enquiry directed by his majesty begun? What order and direction the Masters received from his lordship in the execution of that enquiry?

Tho. Bennet. My lords, I think, on the 3d of November last, we received an order, from my Lord Chancellor, to make up our accompts. It was a very particular order, expressed abundance of items, and columns, in what manner those accompts were to be made up. The Masters had a meeting on this occasion; and a great many, if not all of them, agreed, that the making up of the accompts in that manner as my Lord Chancellor had directed, was impracticable in so short a time; for we were directed to do it forthwith. It was represented by some of the Masters to Mr. Cottingham, and I believe by him to my Lord Chancellor, that it was impossible to do it in so short a time, and it would take up a month or two, or more. I did not know what other people could do: I had begun to make up my accompts; I could have done it in a short time, having been in but a little while: others, indeed, that had been in twelve years, and must have given an accompt of the whole proceedings of that time, could not do it. I was informed by my brother, that he could not have done it in a year: but soon afterwards I was told, that the order was dispensed with by my Lord Chancellor; and all we were to do, was to make up an accompt of the balance of the money and securities that were in our respective offices distinctly, the money and securities in two distinct columns, only the sum total at the bottom. This order the Masters all complied with, as appears by their accompts: and between that and the 9th day of November following, we had several messages from my Lord Chancellor by Mr. Cottingham to dispatch these accompts; for they were much wanted, being to be laid before the committee of council. On the 10th of November we had express orders to appear at my Lord Chancellor's house with our accompts ready. All the Masters, except Mr. Conway, were there.

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Tho. Bennet. I think there were some meetings at Mr. Edwards's house by Mr. Cottingham's direction before, and after that at my lord's house. At those meetings, at one of them, I particularly remember, (which was the most material of all) Mr. Cottingham brought Mr. Dixon with him, and introduced him, saying, we need not be afraid of Mr. Dixon, for he brought him there by my lord's direction, because he himself was deaf, and could not well hear what was said. Upon that he began his message, and said, Our accompts were then laid before the council just at that time: but said he, Suppose my Lord Chancellor or the council should expect that the bonds and

securities should be inspected, would you be willing that any officer from him should inspect your books and securities? The Masters answered, They were ready and willing to do it; I don't remember any body that opposed it. The next question Mr. Cottingham asked was, Whether we could produce the balance of our cash, and shew that we had the money? To that all the Masters spoke in general, that they were under a great concern and surprize, and desired to know what Mr. Cottingham meant by that? Whether it was only to produce the money, or the money to be taken from us? And whether there was any danger of that? Says Mr. Cottingham, You are only to produce the balance of cash, and shew it. We asked, whether we should produce it in goldsmiths' notes, or Bank notes? Says he, I believe goldsmiths notes will serve: you are to shew the balance of your cash; but I think Bank notes will do better. Upon that Mr. Lightboun said, I don't know what the consequence of this may be. Suppose when we have produced these notes they should be detained from us, I am afraid most of the goldsmith's shops about Temple-bar would be shut up the next day, and enquiry would be made, what holiday it was? and thousands of families might be ruined by this transaction. Mr. Cottingham proposed, You may stand by and assist one another. Mr. Kynaston said, I find, we are like to be sacrificed, and given up; for my part, I will neither borrow nor lend: any one that borrows is a knave, and he that lends is a fool. Upon this, the Masters were in great concern. Mr. Cottingham and Mr. Dixon went back to my Lord Chancellor, and staid about an hour and half, and then returned to us, and said, my lord was very busy, and dismissed us; and so we went home.

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[The subscription shewed to Mr. Bennet: and proved by him to be Mr. Holford's hand.]

Serj. *Peng.* My lords, we beg leave that this subscription may be read, which was to be followed by all the Masters.

[*Clerk* reads:]

"I have all these securities standing in my name, as in this accompt is specified, and wil

procure certificates from the proper offices that I have, and had them before the account, if your lordship requires it. And as to the money, I am ready to give your lordships satisfaction, to a demonstration, that I have it in my power to answer it to every person, that shall appear to be entitled to it, and who can give me a legal discharge."

Serj. *Peng.* We beg leave to read Mr. Tho. Bennet's first subscription, that my lord was not satisfied with.

[*Clerk* reads:]

"My lord, I am ready and willing the securities, in the foregoing accompt mentioned, shall be inspected by such person or persons as your lordship shall be pleased to appoint.

"THO. BENNET, 10*th Nov.* 1724."

Serj. *Peng.* Your lordships observe, there is nothing in this subscription as to the cash, and the producing it. Now we beg leave to see the subsequent subscription.

[*Clerk* reads:]

"Nov. 10, 1724. My lord, I have all the securities standing in my name, as in the within-mentioned accompt are specified; as also the tallies, orders and bonds in my custody. And as to the money, I am ready to give your lordship satisfaction, that I am able to answer it to every person that is entitled thereto.

"THO. BENNET."

Serj. *Peng.* Your lordships observe, he hath left out the words, "to a demonstration," because he thought that he could not so clearly make it out. I beg leave to mention, that these accompts and subscriptions, thus altered, were actually delivered in, and laid before the council, and are the original accompts.

Serj. *Probyn.* My lords, I would ask Mr. Bennet, when this proposal was offered to him, that he should subscribe as Mr. Holford had done, whether he made any excuse, or pretended he was not able to do it?

Tho. Bennet. No; I did not; I did as the rest of the Masters did.

Com. Serj. I desire he may inform your lordships when this was?

Tho. Bennet. I think it was the 11th or 12th of November; I can't be positive as to the day.

Mr. *Kynaston* called.

Serj. *Peng.* My lords, we desire that Mr. Kynaston may give your lordships an account, whether he was present at this meeting on the 10th of November, and what passed there relating to their accompts?

Kynaston. Yes, my lords, I was there the 10th of November.

Serj. *Peng.* What passed at that time at the earl of Macclesfield's?

Kynaston. I think I came there before the rest of the Masters, or only two or three were there before me. We gave my lord an account, that we had drawn out our accompts of the securities and cash, and the balance in each Master's hands. Soon after the rest came. My lord first received Mr. Holford's accompt, being the elder Master. A letter at the end of his accompt was read: my lord seemed to be affected with, and to approve very well of it. There was some writing at the end of it relating to the ability. My lord said, it would do very well to have something to the same purpose at the end of the other Masters' accompts, and mentioned to us to go down and write it; accordingly we did go down, and most of us, if not all, did write to that purpose.

Serj. *Peng.* Can you recollect what expressions the earl of Macclesfield used, to recommend it to the Masters?

Kynaston. My lords, I can't justly recollect; I think it was, It would look well before the council, and prevent a further enquiry, or a parliamentary enquiry, I am not positive which: but that I understood to be the meaning of it.

Serj. *Peng.* What was it that would look well to the council?

Kynaston. What Mr. Holford had writ at the bottom of his accompt, "That they were ready," &c.

Serj. *Peng.* My lords, I desire he may be asked, whether there was an enquiry made by the earl of Macclesfield as to his ability or sufficiency?

Kynaston. No; I am sure as to myself; and I don't know as to any body else.

Serj. *Peng.* I desire he would inform your lordships, what subscription he had first made, and what was added, or what advice was given?

Kynaston. I had writ before: "My lord, the person I employed to write out this accompt, has only gone thus far as to the number of the bonds. I have brought the bonds with me, and desire you'll appoint any person to inspect them, and the other securities I have here given an account of."

Serj. *Peng.* What was writ afterwards? This is wrote with a different ink from that before: "And as to the money, I am ready to pay it to the persons entitled thereto." That is with a different ink.

Kynaston. I believe, upon looking upon it, I went down with the rest, and writ that in the parlour in my lord's house.

Serj. *Peng.* I desire he may be asked, whether he, or any other of the Masters then received any explanation how this sufficiency or ability was to appear?

Kynaston. Not then, I don't remember any thing of it.

Serj. *Peng.* Or at any other time?

Kynaston. Some time after this, this was the 10th of November, and I believe, between that and the 16th, when we were to attend the judges, the Masters were summoned to meet at Mr. Edwards's house: I understood it was a summons from my lord Macclesfield; and when we were here, there came Mr. Cottingham and Mr. Dixon. I don't remember all the

discourse; but they were telling us what was to be done: first, we were to produce our securities, and there would be no great nicety in producing them: and then, next, we were to produce the balance of cash: and I remember, on that, Mr. Cottingham said, You must stand by one another, and assist one another. Bank notes, said he, will be best; but if you can't get them, then goldsmiths' notes; you must get one or other to produce and shew.

Mr. *Lutwyche.* I desire he may be asked, what he thought he meant by the proposal of getting goldsmiths' notes, or Bank notes?

Kynaston. I did take the meaning in the worst sense to be, for the Masters barely to make a shew of them; and that made me complain; and I spoke warmly, and said, I saw what the design was; and whoever borrowed any money on that occasion was a knave, and he that lent it was a fool.

Mr. *Lutwyche.* I desire he may be asked, whether there was any recommendation by Mr. Cottingham or Mr. Dixon, and in what particular expressions those recommendations were made?

Kynaston. I believe Mr. Lightboun expressed himself, That if they borrowed goldsmiths' notes, and they were detained, the goldsmiths' shops would be shut, and people would be enquiring what holiday it was.

Mr. *Lutwyche.* I desire he may be asked, what was said about making a shew? If Mr. Cottingham owned what was the meaning of those words?

Kynaston. I don't remember: They were pretty warm, and said they would go to my lord Macclesfield, which they did, and returned again.

Mr. *Plummer.* My lords, I desire he may be asked, whether it was generally understood among the Masters, that giving of Bank-notes and goldsmiths' notes was to be understood borrowing?

Kynaston. I understood it so myself, and I believe several others did; Mr. Lightboun, and Mr. Holford, and some of the others did so, by what they said.

Serj. *Peng.* My lords, we have done with this witness.

Serj. *Probyn.* My lords, I desire to ask this witness the same question that I asked the other; and that is, whether at the time when this proposal was made to him, that he should subscribe as Mr. Holford had done, he made any objection to it?

Kynaston. No, I did not make any objection to it. I had been there first, and with my lord, and at the farther end of the room, that I remember less what happened at that time, than other people did.

Mr. *Lightboun* called.

Serj. *Peng.* My lords, we desire that Mr. Lightboun may give an account of what passed at this meeting, relating to the bringing in of the accompts?

Lightboun. What meeting? That at Mr. Edwards's, or that at the earl of Macclesfield's?

Serj. *Peng.* That at Mr. Edwards's.

Lightboun. I was at Mr. Edwards's about that time, at some meeting when our accompts were talked of, but whether it was before they were delivered in, or afterwards, I cannot tell. We had so many meetings about that time at Mr. Edwards's, that I don't remember exactly, which was before, and which after. I remember, at the meeting when Mr. Cottingham and Mr. Dixon both were there, there was some discourse relating to the producing of the securities, and of the balance of the cash. I then asked, whether we should produce it in Bank notes, or goldsmiths' notes; and I understood, it was hinted that the goldsmiths that we had dealt with, would assist any Master that wanted money, but by whom it was said I can't recollect. The answer I made to that was, that I should be sorry that any Master should borrow notes of a goldsmith, and that they should be staid or secured when produced, which I apprehended would be done; and next morning several goldsmith would be forced to shut up their shops, and it would look like a holiday in Fleet-street.

Mr. *Lutwyche.* Do you remember any thing concerning a net?

Lightboun. I don't remember the expression of a net.

Mr. *Lutwyche.* What application was made to any of the Masters to carry in their accompts, and to whom?

Mr. *Lightboun.* My lord Macclesfield one morning sent for me, and desired me, that when the accompts were brought into the council, I would be thereabouts; that if there was any occasion to clear up or explain any thing, or give farther satisfaction to the council, I might be ready. I told his lordship, I would give no satisfaction about any one's accompts but my own. But if his lordship pleased that I should attend, I would be thereabouts; and if his lordship pleased, I would have another Master with me: I named Mr. Holford, and my lord desired me to acquaint Mr. Holford with it, which I did; who said, he was ready to go with me to answer any questions that should be asked, arising on the perusal of his accompts.

Mr. *Lutwyche.* What did he desire you to attend for?

Lightboun. To resolve any question or difficulty that should arise before the council. After this Mr. Cottingham told Mr. Holford at Mr. Edward's, that my lord desired that two of the Masters should attend the council with the accompts of the whole, and that Mr. Holford, being the senior Master, should be one, and he was to choose whom he would have go along with him; and I having given Mr. Holford intimation before of my lord's inclination, Mr. Holford desired me to go with him. I told him, I did not care to carry in any other accompts than my own; as I had not concerned myself in other Masters accompts, I would not then begin; I would not carry any but my own, and

nobody else should carry mine; I would not be a representative of the body. Upon that Mr. Holford recollected himself, and said, Nor he neither; he would carry no accompts but his own. I said, the accompts were called for by my Lord Chancellor, and not by the privy council, and thereupon I thought it proper to wait upon my Lord Chancellor, and deliver them to him.

Mr. *Lutwyche.* Your lordships will observe, the persons thought most proper to appear for the rest of the Masters, Mr. Holford, and Mr. Lightboun, were so apprehensive of the Masters being deficient, that they did not care to appear for them. I desire Mr. Lightboun may be asked, what passed on the 10th of November, when the accompts were delivered to the earl of Macclesfield?

Lightboun. My lords, upon the 10th of November my accompt was not ready at the time I was to deliver it. I rather chose it should not be ready; because I did not care that it should be carried in by any body but myself. However, I waited at the proper time; and when we came there, Mr. Holford delivered in his accompt, and a letter he had writ to his lordship, and fixed to his accompt, which was there read. My lord seemed to like the letter, and took notice of it; and I think, another or two who were my seniors, delivered in their accompts. When it came to my turn, I acquainted my lord, that mine was not ready; but I would go home and finish them, and attend his lordship with them at the cock-pit by eight of the clock. Accordingly I did, and sent it in to his lordship.

Mr. *Lutwyche.* What passed farther relating to their signing of the accompts?

Lightboun. I know nothing of it; for I went away to finish my own.

Serj. *Peng.* My lords, we desire that Mr. John Bennet may be called.

Mr. *John Bennet* appeared.

Mr. *Lutwyche.* My lords, we desire that Mr. John Bennet may be asked, whether he was at this meeting at Mr. Edwards's house, and what passed at that time?

J. Bennet. My lords, I was at that meeting at that time, when Mr. Cottingham and Mr. Dixon came in, and told us they came from my Lord Chancellor; and Mr. Cottingham said, he had brought Mr. Dixon with him, because he was deaf, and could not well hear. Mr. Cottingham said, he had two questions to propose; first, whether we were willing that all our bonds and other securities in our custody, should be inspected by him or any other? All of us were willing, and agreed to that. The second was, whether we were willing, or would produce the balance of cash in our hands before the council? To this the Masters made a stand, and said, The cash was considerable; and it could not be presumed that they kept it locked up in chests or trunks in their own houses; that was the way to have our throats cut: But we believed we could do it in a reasonable time. To which Mr. Cottingham said, Can't you produce it in Bank notes or goldsmiths' notes? Bank notes, said he, will be best; but do it in goldsmiths' notes, if you can't get Bank notes. To which Mr. Lightboun said, If we produce them in goldsmiths' notes, and there should happen to be a net thrown over them, and they should be secured, the goldsmiths might be obliged to shut up their shops, and people would be enquiring what holiday it was; and it might be a great damage to those goldsmiths.

Mr. *Lutwyche.* I desire he may be asked, whether any thing was said of assisting one another?

J. Bennet. Mr. Cottingham pressed us very much to help and assist one another, as far as we were able.

Mr. *Lutwyche.* Whether was any other expression made use of by him?

J. Bennet. I don't remember there was: but he repeated it several times, that we should stand by, and assist one another with cash.

Mr. *Plummer.* My lords, I desire to ask this witness if, in pursuance of the advice given by Mr. Cottingham, he did assist any of the Masters, or was assisted by any of them?

J. Bennet. One of the gentlemen did assist me with cash, which is locked up in the chest: I gave him security for it. And as to my assisting any body, Mr. Conway informed me, he had a real security for 9,000*l.* and begged, if I could, that I would assist him with 5,000*l.* and in two or three days I should have it again: I told him, I had in my accompt mentioned my cash, and that I had offered to make up the balance by my real estate, and so could not assist him with any cash. He asked me, if I had any bonds by me? I told him I had 2,000*l.* bonds; and if he could engage to bring them back to me in two days he should have them: and upon lodging a bag of writings with me, which he told me was a real security for 9,000*l.* I accordingly did lend him them, and he brought them back again to me in two days time.

Mr. *Plummer.* I desire he may be asked, what his inducement was for lending the bonds?

J. Bennet. The real inducement was the real security which was given me: but it had been recommended by Mr. Cottingham too.

Mr. *Plummer.* I desire to know whether he opened the bag, to see what the security was, or took it by content?

J. Bennet. No, I did not open it; Mr. Conway assured me it was so.

Mr. *Plummer.* What use did he make of those bonds?

J. Bennet. Indeed I don't know.

Mr. *Lutwyche.* My lords, I desire he may be asked, whether those bonds belonged to the suitors of the Court?

J. Bennet. They were brought in by the suitors of the Court after my accompt was delivered in, and I must give them in my post-accompt: therefore, said I, I must have them again in two days time.

Serj. *Peng.* I desire he may be asked, who

ther this was after he had given in his own accompt?

J. Bennet. Yes, it was after I had given in my own accompt of my money securities, and the accompt of my estate.

Serj. *Peng.* I desire to know what subscription Mr. John Bennet made to his accompt at first, and what afterwards?

J. Bennet. I came to my lord Macclesfield, just after the gentlemen had been delivering in their accompts; and they were below, writing their subscriptions to their accompts. I had then made no subscription to my accompt; they told me what my lord had recommended to them to write; and I had one of them laid before me. I took my pen and ink, and varied it in some measure, and made the subscription in this manner: "I have all the securities in my name, as specified on the other side; and all the bonds and orders are in my custody; and I am ready to satisfy your lordship, that I am able to answer the money, to every party, that is entitled, or shall have a right to receive it. J. BENNET."

Mr. *Lovibond* called.

Mr. *Lutwyche.* My lords, I desire he may be asked, whether he was present at this meeting (that hath been so often mentioned) at Mr. Edwards's?

Lovibond. My lords, I was there but a very little while.

Mr. *Lutwyche.* I desire he may be asked, while he was there, whether any thing was proposed, and by whom, for the Masters to lend one another money or notes?

Lovibond. There was Mr. Cottingham and Mr. Dixon; and one of them said that the Masters should stand by one another, and recommended it to them to assist one another with Bank notes, or goldsmiths' notes.

Serj. *Peng.* To what purpose?

Lovibond. Neither of them said to what purpose.

Serj. *Peng.* What was the discourse about that time?

Lovibond. The discourse was about the accompts, and how every man's balance was to be made up.

Serj. *Peng.* I desire to know, during that time, whether Mr. Lovibond observed that Mr. Cottingham or Mr. Dixon went to my Lord Chancellor?

Lovibond. Yes, my lords, they both went, and I came away, and did not stay till they returned.

Serj. *Peng.* I desire to ask, Whether Mr. Lovibond did not lend some of the Masters some money?

Lovibond. I lent some money to Mr. Bennet.

Serj. *Peng.* How much was it?

Lovibond. It was 10,200 and odd pounds.

Serj. *Peng.* I desire to know, whether Mr. Lovibond was present upon the delivering in of the accompts on the 10th of November last?

Lovibond. Yes, my lords, I was.

Serj. *Peng.* I desire he would look upon that subscription he at first made upon that accompt, when he delivered it in.

Lovibond. It is here.

Serj. *Peng.* Read it.

Lovibond reads. "All which before-mentioned particulars I am ready to answer on demand, or to give security so to do, whenever required. H. LOVIBOND."

Serj. *Peng.* I desire he may be asked, whether my lord Macclesfield made any objection to any part of that subscription, and what part in particular?

Lovibond. He made an objection to the latter part of it, because that might imply that my effects were not ready.

Serj. *Peng.* Whether did you alter it afterwards, or was it recommended to you to alter, and in what manner?

Lovibond. My lord Macclesfield mentioned, that Mr. Holford's conclusion of his accompt was most proper; and I had best alter it to that, and make that the form; accordingly I did; I went down stairs, and altered it as it now stands.

Mr. *Lutwyche.* Read this subscription.

[*Clerk* reads.]

"All these securities standing in my name, as in this accompt is specified, I am ready to procure certificates from the proper offices, that I have, and had them before this accompt, if your lordship requires it; and as to the money, I am ready to answer it upon demand to every person entitled thereto, and who can give me a legal discharge. H. LOVIBOND."

"*Nov.* 10, 1724."

Mr. *Lutwyche.* My lords, I beg leave to make one observation upon this, I would not trouble your lordships with observing upon every one of them; but there is something very particular and remarkable in this case of Mr. Lovibond's. Mr. Lovibond had said, as the truth of the case was, when he delivered in his accompt, and this subscription, that he was able to produce or give security, &c. That would have looked before the council as if the money was not ready to be produced, it was only giving security; and for that reason this alteration is to be made, to make it look as if he had the actual balance in his hands.

Serj. *Probyn.* My lords, we desire he may be asked, whether, at the time that he wrote this subscription, he was not able to produce the balance?

Lovibond. My lords, I did in my conclusion offer it; and I could have done it the next day.

Mr. *Strange.* I desire he may be asked, whether he could have done it out of his own estate or effects?

Lovibond. I could have done it out of my own estate.

Mr. *Strange.* Did not you mention the sum of 10,000 and odd pounds lent? I desire to know whether you took real security for it?

Lovibond. Yes, I have a real security.

Mr. Strange. In land?

Lovibond. Yes, in land.

Mr. *Plummer.* I desire he may be asked, if my lord Macclesfield asked him any questions about his ability?

Lovibond. No, my lord did not ask me any questions about my ability.

Dr. *Sayer.* I desire he may be asked, whether at that time he did not believe, that all the Masters were sufficient and able to make good their accompts?

Lovibond. I did believe so, from what discourse I heard pass among themselves. I had no knowledge of their affairs, or of their estates.

Mr. *Edwards* called.

Serj. *Peng.* My lords, I desire Mr. *Edwards* may give your lordships an account of what passed at this meeting at his house?

Edwards. My lords, I received a message from Mr. Cottingham, to know if I would give leave for the Masters to meet at my house? To which I consented. Some came before Mr. Cottingham, and asked me if I knew what this meeting was about; I could give them no account of it. Mr. Cottingham soon after came, and the rest of the Masters. Mr. Cottingham said, he had two or three matters to lay before them; one was, whether we were willing that our bonds and securities should be inspected by my Lord Chancellor, or by any person he should appoint? Every body consented hereto. I think, another thing was, my Lord Chancellor thought it proper, we should carry our accompts to the council: there were some objected to that, and we thought it not proper; and the conclusion of that was, we were to deliver them to him, as being most proper for my Lord Chancellor to carry them to the council.

Serj. *Peng.* Was that all that was offered at that meeting?

Edwards. Really I don't know, but that there was a third thing mentioned. I can give you but a very imperfect account of this meeting; and that for this reason; it was not thought proper that my servants should come in, and they obliged me to go often out, which I did; and afterwards I heard the chief substance of this meeting. And I remember, that after I had heard the main matter, I said, Gentlemen, the chief consideration is to get your money ready as soon as you can; I think the intent is plain to get the money away from you.

Serj. *Peng.* Whether do you remember any advice that was then given, relating to the making up the balance?

Edwards. No, my lords, I do not remember: I heard something afterwards by the Masters, about producing notes; but if any thing was mentioned about it, it was when I was out of the room.

Serj. *Peng.* Whether on the 10th of November you were present at the earl of Macclesfield's?

Edwards. Yes, my lords, I was.

Serj. *Peng.* Look upon that accompt and subscription.

Mr. *Edwards* looks upon it.

Serj. *Peng.* I desire he may be asked, what subscription he first made when he gave it in, and whether any alteration or addition was made by him afterwards?

Edwards. Some of the Masters were at my Lord Chancellor's before me: I did not think it necessary, nor had written any thing to my accompt before I came there: So I went into a room, and writ this that was first writ; "My lord, I am ready and willing the securities in the foregoing accompt mentioned shall be inspected by such person or persons as your lordship shall be pleased to appoint.'

" H. Edwards."

Serj. *Peng.* What other subscription was made after that?

Edwards. After I had made this subscription, I carried my accompt, and delivered it to my Lord Chancellor; who looking upon this subscription, did not seem to approve of it: but he thought Mr. Holford's more proper, and desired me to alter it, that all might be as Mr. Holford's was. I then went out of the room, and transcribed the substance, if not the words of Mr. Holford's upon my account, and then I delivered it to my lord again.

Serj. *Peng.* Read that subscription.

Mr. *Edwards* reads.

" The several sums of money and securities mentioned in this account, are what have come to my hands since I was admitted a Master, separate from what were in the hands of Mr. Dormer during the time he was a Master, (the account whereof, by reason of the shortness of time, I have not been able to settle; but will as soon as possible), and for which I am ready to procure certificates from the several companies and offices, if your lordship requires it. And as to the money, I am ready to pay it to every person lawfully entitled thereto, having a proper discharge for the same.

" *Nov.* 10, 1724." H. Edwards."

Serj. *Probyn.* My lords, if they have done with this witness, I desire he may be asked, if he was not ready to pay his balance according to his subscription?

Edwards. Yes, I was; I could have paid it in a week sooner than the time required.

Mr. *Conway* called.

Sol. Gen. My lords, I desire that Mr. Conway may give your lordships an account, whether he was at this meeting?

Conway. My lords, I was present at the first meeting at Mr. Edwards's house, when Mr. Cottingham delivered my Lord Chancellor's command, that we should provide and prepare our accounts: but nothing more happened during the time of my stay at that meeting; I went away immediately. At the second meeting Mr. Cottingham and Mr. Dixon were

there: Mr. Cottingham had a great cold; and as I remember, there were two proposals made: the first was in relation to our bonds and securities; and the second was in relation to the money and cash. After every Master had delivered his opinion to these points, Mr. Cottingham and Mr. Dixon went to wait upon my Lord Chancellor with an account of what the Masters had said; and before they came back, I was gone.

Serj. *Peng.* I desire he may be asked, whether at that time, when it was proposed to the Masters to produce their cash, they said they were able to do it?

Conway. Every Master delivered his opinion as he thought fit. Mr. Lightboun merrily said, If we produced goldsmiths' notes, and they should be secured, the goldsmiths' shops would be shut up, and people would be enquiring what holiday it was. Mr. Kynaston made some observations; every one spoke as they thought fit.

Serj. *Peng.* I desire he may be asked, whether they all declared, they were able and ready to make good their accounts?

Conway. I think they all did.

Serj. *Peng.* Whether to produce their effects or their cash?

Conway. I am not sure, whether it was mentioned cash or effects; we made no distinction at that time between cash and effects.

Serj. *Peng.* I desire he may be asked, whether he himself declared, that he was able and ready to produce his effects?

Conway. I did declare it at that time, as I afterwards writ, that I would endeavour to produce my effects.

Serj. *Peng.* Whether there was any, and what advice or instruction given, relating to their assisting of one another?

Conway. No such thing happened while I staid there.

Serj. *Peng.* I desire it may be asked, whether Mr. Conway at any time afterwards borrowed any money of any of the Masters, and of whom?

Conway. The first time I attended the judges and the directors of the Bank, I did bring my securities, and an account of my effects at the same time, without borrowing a farthing from any person: before the securities were gone through, and the account of my effects taken, it was observed, that the same was liable to objection, as consisting of land, mortgages, bonds and notes, and things of that kind. And before I went, I was told, that some of the Masters had taken an oath; I desired to know what that oath was? It was answered, that it was a voluntary oath; and I said, I could only swear, that I had effects to answer, and that I would endeavour to turn those effects into cash; and so withdrew.

Serj. *Peng.* I desire he may be asked, whether he borrowed any money?

Conway. Some time after this I waited upon Mr. Godfrey; and before I came away, he asked me if I had any bonds? I told him I had; then pray, says he, let me have what you can spare, and send them immediately: Whereupon I went home, and sent him 5,000*l.* India bonds. Some days after that, I expected Mr. Godfrey to return me the favour; and I carried to him effects to (as I apprehend) the value of 6 or 7,000*l.* or more; and I desired him to lend me bonds, and he seemed unwilling without the security; and he kept the security.

Mr. *Lutwyche.* He hath not answered to those questions, whether he borrowed money, and what sums?

Conway. Mr. Godfrey lent me upon the bonds 9,000*l.* and Mr. Bennet 2,000*l.*

Mr. *Lutwyche.* Only to pursue this question, I desire to know, whether the securities were turned into money, or into notes?

Conway. Yes, my lords, they were turned into notes.

Mr. *Lutwyche.* I desire he may be asked, whether they were locked up, or he did take them back again?

Conway. I took them back again.

Mr. *Lutwyche.* What became of them afterwards?

Conway. Some of them I paid off, others I returned to the person that had advanced me money on those bonds.

Mr. *Lutwyche.* I take it, he says he had the effects that produced those notes from Mr. Godfrey and Mr. Bennet; therefore I desire to know, what became of those notes after he carried them back from the judges?

Conway. I returned them to the person that had advanced me the notes on those bonds?

Mr. *Lutwyche.* Who was that?

Conway. The goldsmith, Mr. Rogers, at Temple-bar.

Mr. *Plummer.* I desire to know when he returned those bonds again?

Conway. In a few days after.

Mr. *Lutwyche.* My lords, it may be necessary to examine how it was that he persuaded the goldsmith to let him have those notes?

Conway. I gave him bonds for them.

Mr. *Lutwyche.* Whether were those the bonds that you had from Mr. Godfrey and Mr. Bennet?—*Conway.* They were.

Mr. *Lutwyche.* Whether they were not delivered to the goldsmith in the nature of a pledge for those notes?

Conway. Yes, they were.

Mr. *Lutwyche.* What became of the bonds?

Conway. I returned them.

Mr. *Lutwyche.* To whom?

Conway. To Mr. Godfrey and Mr. Bennet.

Serj. *Peng.* When he carried back the notes to the goldsmith, at that time, whether he took up the bonds?—*Conway.* I did.

Serj. *Peng.* As I apprehend, he says, he had lent Mr. Godfrey 5,000*l.* India bonds, and in return he expected that Mr. Godfrey should assist him; I desire he may be asked this question, whether the 5,000*l.* in India bonds he supplied Mr. Godfrey with, was after or before he produced his cash to the committee?

Conway. After.

Serj. *Peng.* Was it before Godfrey had done it?

Conway. After he had produced his securities.

Serj. *Peng.* Was it before or after he had produced his cash?

Conway. It was after he had produced his securities, and before he had produced his cash.

Serj. *Peng.* My lords, we think it will be very necessary to lay before your lordships a general state or account of the total deficiency; to shew how much, upon the examination and enquiry that hath been made, the total of the deficiencies in the several offices amount to; and we apprehend, that we are able likewise to give an account of some additional deficiencies that have been discovered since. I apprehend, there was at that time near 100,000*l.* deficiencies.

Serj. *Probyn.* I desire he may be asked, whether at that time, when he wrote the subscription, he was able to pay the balance of his account?

Conway. I was, in effects I had, and I said no otherwise.

Mr. *Sandys.* I desire he may be asked, if my lord Macclesfield asked him as to his ability?

Conway. No, my lords, he did not; to my remembrance he did not. I delivered my account to Mr. Cottingham.

Serj. *Peng.* I desire he may be asked, what deficiency there remains upon his office; whether he can recollect how much it is?

Conway. My lords, I believe it is 13,000*l.* my charge of which I can take off something in my post-account.

Serj. *Probyn.* I desire he may be asked, whether he is now able to make good the deficiency in his office?

Conway. Yes, my lords, I am.

Serj. *Probyn.* Whether he hath made any conveyance of any estate as a security for it?

Conway. I have.

Serj. *Peng.* I desire he may be asked, whether any thing, or how much, hath been raised out of that estate?

Conway. It is made so very lately, that I don't know that any thing hath been raised since: it is but a few days ago that it hath been made.

Lord *Lechmere.* My lords, I would be glad to know, as there is a balance of 13,000*l.* whether he stands indebted to any other persons but to the suitors of the Court, and to whom?

Conway. No, my lords, I don't owe any thing to any body, to my knowledge.

Mr. *Lutwyche.* I should be very glad if Mr. Conway could extricate himself out of the difficulties on account of the deficiency in his office. It is very proper to enquire how, and by what estate, that is to be made good?

Conway. It is to be made good by an estate in land.

Mr. *Lutwyche.* I desire to know, whether that estate is settled, whether it was not settled upon his marriage?

Conway. It was never settled on my marriage. I was tenant in tail, and my wife and son joined with me in levying a fine.

Mr. *Lutwyche.* Whether it is not settled by will?

Conway. I was tenant in tail by the will of my father; I have levied a fine, and my wife and son have joined with me.

Mr. *Onslow.* What interest had your son in it?

Conway. No interest, as I apprehend; but I thought it was necessary he should join, to take off all difficulties and objections to the title.

Mr. *Onslow.* Whether there are no annuities charged upon that estate, and what they are?

Conway. There are no annuities charged on that estate.

Mr. *Onslow.* No payment to the mother?

Conway. There is, out of another estate.

Mr. *Onslow.* What are the rents of the estate you have secured for the payment of this money?—*Conway.* Between 5 and 600*l.* a-year.

Mr. *Onslow.* Is that your computation, or is it let at so much now?

Conway. I can't say it is all let so; there are some demesnes.

Mr. *Onslow.* What are the rents of that part of the estate that is let?

Conway. I take it to be 500*l.* a-year.

Mr. *Onslow.* What, let at 500*l.* a-year?

Conway. Yes, or thereabouts.

Mr. *Onslow.* Do you reckon the whole estate to be worth 500*l.* a year?

Conway. No, I don't reckon in the whole estate, but only that which is conveyed for the securing of this money.

Mr. *Onslow.* Then I desire to know what are the rents of this estate as it is let?

Conway. I take it to be 500*l.* a-year or thereabouts, that is applied for, and as a security to answer my deficiency.

L. *Lechmere.* This 13,000*l.* balance is due to the suitors, which he says is secured by this estate: I would be glad to know how the deficiency came, and what is become of this 13,000*l.* that is due to the suitors?

Conway. The occasion of it was, my coming into the office cost me to my predecessor 6,000*l.* I paid besides 1,500*l.* upon my admission, and 500*l.* contribution towards making good Mr. Dormer's deficiency.

Mr. *Onslow.* How was the rest of the debt contracted? You have mentioned but about 8,000 pounds.

Conway. I believe I might, upon account of my brother, borrow 1,500 or 2,000*l.* to satisfy his account to the crown.

Serj. *Peng.* Out of what cash did you repay it?

Conway. I believe it might be out of the office.

Mr. *Onslow.* What is become of the rest; how did you apply the remainder?

Conway. The remainder; I can't tell but I might have so much due among my acquaintance; I believe I may.

Mr. *Onslow.* Did you then lend your acquaintance out of the suitors' money?

Conway. I believe I might at times lend

friends out of the cash that remained dead and useless, and because I apprehended it was secure.

Mr. *Onslow.* You say you have lent to several of your acquaintance out of the suitors' cash; I would have you name any one person to whom you have lent any of the money of the office?

Conway. I remember a noble person, if it is proper to mention his name, to whom I have lent 2,600*l.*; he is now dead.

Serj. *Probyn.* I don't know whether your lordships will not be pleased to confine the Managers to examine only to the particular Articles they are now on.

Mr. *Onslow.* We are now upon the Article of the deficiencies, and the question hath been asked by the counsel for the noble lord, whether this deficiency can be made up by Mr. Conway? Therefore it is proper to know, whether this deficiency is likely to be made up, and to know where the money is, and therefore I would ask who this six-and-twenty hundred pounds was lent to?

Serj. *Probyn.* My lords, I submit it whether that question be proper, because Mr. Conway hath given land security to make good this deficiency; and therefore it is not material for your lordships' judgment, to enquire how this deficiency happened.

Mr. *Lutwyche.* I am very sorry to lay before your lordships the reasons and the order upon which he was committed. I apprehend it extremely material upon this point, and ariseth from what the counsel for the noble lord have entered into themselves; for they have asked, whether he was able to make good his deficiency: now is it not proper for us to ask the particular circumstances to find out the truth, whether he is so or not? Therefore I beg leave to ask one question, not waving the other, whether he hath assigned over all his debts that he could to make good his deficiency?

Conway. I have assigned over all my real estate.

Mr. *Lutwyche.* Whether he hath assigned over this 2,600*l.* due to him?

Conway. That is applied.

Mr. *Lutwyche.* Applied, how?

Conway. Applied amongst my causes.

Mr. *Lutwyche.* Did he lend a nobleman a sum of money, and apply it to a cause?

Conway. That sum of money you were pleased to enquire after, I applied to a cause.

Mr. *Onslow.* He said he lent a sum of money, &c. I desire he may be asked, who this 2,600*l.* was lent to?

Conway. I was applied to by a nobleman to lend him the sum of 2,600*l.*

Mr. *Onslow.* By whom was you applied to?

Conway. By my lord Bulkeley, and accordingly it was advanced to him, and it is since applied in a cause.

Mr. *Onslow.* Applied, how?

Conway. Applied in a cause, with the approbation of the parties.

Mr. *Onslow.* Hath it been repaid?

Conway. No; it is applied in a cause of a suitor, and now it remains as security.

Earl of *Abingdon.* I am so nearly related to that noble lord that is mentioned, that I must do that justice, as to put Mr. Conway in mind, as I did Mr. Hiccocks before, that if any question is asked him, which may personally subject him to any penalty, or, as he hath the bar-gown, may concern his client, he ought to be left to his discretion, whether he will or will not answer.

Lord *Lechmere.* A person is not obliged to answer any thing that may criminally affect him; but where the enquiry is after a debt, in order to explain his oath as to this sufficiency, which is the matter of debate, surely that is material, and ought to be answered to; and I desire to be informed, whether this 2,600*l.* which he said was lent this noble lord out of the suitors' money, was repaid to him by my lord Bulkeley, and when?

Conway. It is not repaid. It is applied in a cause; the parties have approved of it as a security.

Lord *Lechmere.* When was this money in the hands of my lord Bulkeley applied to the benefit of any suitor, and by what order or authority?

Conway. It is some time since, some months ago, five or six months ago.

Lord *Lechmere.* Was this by any order of the Court of Chancery?

Conway. No, my lords, by the approbation of the parties.

E. of *Macc.* My lords, if you please to give me leave, I would suggest something that possibly may help towards the better understanding him. If my guess be right, this relates to his post-accompt. He hath said his charge is 13,000*l.* And he hath said, he could discharge 2,000*l.* or more, of that balance by a post-accompt; now I apprehend this he is speaking of now, is that article of the post-accompt. I don't know if I guess his meaning right, but I desire he may inform your lordships, in case it be otherwise.

Lord *Lechmere.* It may be for your information to know who are the persons to whom this is applied; that it may be known whether it is in the post-accompt or not?

Mr. *Onslow.* My lords, we desire first to know what security my lord Bulkeley gave?

Conway. He gave a bond and judgment.

Mr. *Onslow.* Who is it you have applied the security to?

Conway. It is in the cause of Faulconberg contra Faulconberg.

Mr. *Onslow.* Do you reckon this, part of the 13,000*l.* now deficient?

Conway. No, I do not reckon it in that sum.

Mr. *Onslow.* Your lordships will please to recollect, that his deficiency is 13,000*l.* We ask him how that deficiency came; he hath given your lordships an account of 10,000 odd hundred pounds; and first said the residue was in the hands of his acquaintance, and named

2,600*l.* money of the suitors to be in the hands of my lord Bulkeley; now he saith this last sum is not part of the 13,000*l.* Therefore now I would ask, how the remainder of his deficient money was applied, or how the debt happened?

Conway. If my lords will please to give me leave to explain it: as to the remainder of the 13,000*l.* you have been pleased to reckon 10,000 odd hundred pounds to be made out; then there is 2,100*l.* odd money I have laid out in land, which I have since conveyed, which makes 12,000 odd hundred pounds; and the rest I have in bonds and notes, which I have to make up the residue.

Mr. Lutwyche. I desire he may be asked, whether he hath those notes, and they are ready? I desire to know, whether they have not been paid into court to make up his deficiency?

Conway. No, I humbly hope to have it allowed me on my post-accompt, being applied in the foresaid cause with approbation of the parties.

Mr. Onslow. We have done with him; and leave him to your lordships' observation.

Mr. *Thompson* called.

Serj. *Peng.* My lords, we beg leave, that Mr. Thompson may give your lordships an account, upon the inspection and examination of these accompts, how much the deficiency of the several Masters amounted to?

Thompson. So much as the several Masters stood charged with by their own accompts, and did not lock up or produce proper securities for, I account a deficiency; and by this rule I have collected the deficiencies of the several Masters, from the reports made to the committee of council.

Mr. John Bennet's deficiency amounts to 17,541*l.* 15*s.* 10*d.*

Mr. Conway's deficiency in his cash only amounts to 10,039*l.* 4*s.* 4½*d.* but Mr. Conway, while his accompts were under examination, sold 2,000*l.* South Sea Annuity, and 3,500*l.* South Sea Stock; and of the money arising thereby, he paid to the suitors, to whom such annuity and stock did belong, no more than 2,593*l.* 9*s.* 3*d.* so that his deficiency is encreased by the sum of 3,550*l.* somewhat more or less, according to the price he sold at.

Serj. *Probyn.* Was what he sold part of the suitors' security?

Thompson. Yes.——Mr. Kynaston's deficiency amounts to 26,908*l.* 11*s.* 3½*d.*

Mr. Thomas Bennet's deficiency amounts to 9,075*l.*

The total of the deficiency of the present Masters is 67,114*l.* 11*s.* 5½*d.*

The charge that remained upon Mr. Berret's office, amounted to 56,050*l.* 10*s.* 1½*d.* But Mr. Bennet and Mr. Godfrey, the Masters who had the care of his effects, gave it as their opinion before the judges and directors, that the effects he left would produce 44,000*l.* and upwards; so that I compute the deficiency of Mr. Berret's office at 12,050*l.* 10*s.* 1½*d.*

The total charge upon Mr. Dormer's office, when he resigned to Mr. Edwards, amounted to 49,604*l.* 11*s.* 11*d.*; but Mr. Edwards has paid, in discharge of that sum, the sum of 23,725*l.* 15*s.* 9½*d.* so that the deficiency of Mr. Dormer's office amounts to 25,878*l.* 16*s.* 1½*d.*

Serj. *Peng.* Whether in that is Mr. Wilson's and Mr. Poulter's security included in Dormer's accompt?

Thompson. Mr. Dormer's deficiency I take to be 25,878*l.* 16*s.* 5½*d.*; and the whole deficiency I take to be 165,043*l.* 17*s.* 8½*d.* And if any securities or sums of money belonging to the suitors are omitted in the Masters' accompts, such securities and sums are not included in this estimate.

E. of *Macc.* Have you had before you the administrator, either of Mr. Berret or Mr. Dormer?—*Thompson.* No, my lord.

Serj. *Peng.* My lords, we shall beg leave to call one witness to give your lordships an account of another deficiency of 2,000*l.* upon Mr. Conway, which is not charged in his accompt. We desire that Mr. Saunderson may be called.

Mr. *Saunderson* sworn.

Mr. *Lutwyche.* We desire that Mr. Saunderson may give your lordships an account of any money in Mr. Conway's hands, and how much it is, that is not brought to accompt?

Saunderson. My lords, I was concerned as a solicitor in a cause in Chancery, between sir Erasmus Norris and Alexander Norris; soon after the accounts were brought into the Register's office, I went to look and see if Mr. Conway had charged himself with a sum of money paid in in that cause. I found by his account that it was not charged. I had drawn up the account, and given a copy of it to Mr. Conway, which he did not deny, but he said, there was not so much by 1 or 200*l.* Said I, there is no entry at all of the cause, and no mention of any sum. I told him, it was an omission not to mention the cause or sum. He said, that he believed it was not so much, he did therefore not mention it. I asked him why he did not insert how much it was as he thought it? He said, because he would pay in all.

Serj. *Probyn.* We desire he may be asked, how much the whole money in that cause was?

Saunderson. 2,274*l.* 8*s.* 11*d.* besides interest from Lady-day last was twelvemonth.

Sol. Gen. My lords, this is the sum of the account we had to lay before your lordships of the deficiencies, notwithstanding the Masters represented themselves as able to pay the whole. We would not represent it to your lordships that this will certainly be the loss, because some of the Masters have given security for some part; though we apprehend the security given will not be sufficient for half.

E. of *Macc.* I desire to ask Mr. Thompson, whether this charge he makes upon Mr. Berret's office be a charge taken from the office, or only an account taken from Mr. Meller?

Thompson. This charge was taken from the vouchers which Mr. Meller produced.

E. of *Macc.* Are there any payments allowed made by Mr. Borret in his life-time?

Thompson. A great many.

E. of *Macc.* Who gave you an account of that?—*Thompson.* Mr. Meller, my lord.

E. of *Macc.* But I speak of the money paid by Mr. Borret himself, not what Mr. Meller paid. Have you any account what Mr. Borret paid out himself?

Thompson. The account we had of this was from one Mr. Parker, as I think his name was, who was clerk to Mr. Borret. He produced several receipts for the sums paid: and the Masters in Chancery, who had the care of Mr. Borret's effects, allowed the books and papers produced by Mr. Parker, to be the books and papers belonging to Mr. Borret's office.

E. of *Macc.* As to the effects belonging to Mr. Borret, who gave you the account of them?

Thompson. Mr. Bennet and Mr. Godfrey.

E. of *Macc.* Do you know who is administrator to Mr. Borret?

Thompson. I have heard that Mr. Paxton is.

Paxton. Yes, my lords, I took out administration to Mr. Borret about the middle of April last.

Lord *Lechmere.* I desire to ask Mr. Thompson, whether the computation he hath made of the several deficiencies, amounting to 105,000*l.* is taken from the voluntary accompts of the Masters delivered in, or whether any of the suitors were concerned in those accompts, or have been parties to such computations?

Thompson. From the Masters' voluntary accompts only.

Serj. *Peng.* I beg leave to ask one question, which arises from the question, which the lord within the bar hath been pleased to ask, whether Mr. Godfrey and Mr. Bennet were not the Masters that appeared, and were employed under the earl of Macclesfield at that time, and had the custody of the effects of Mr. Borret?

Thompson. Mr. Bennet and Mr. Godfrey were the persons that appeared to us to have the care and custody of Mr. Borret's effects.

Lord *Lechmere.* As to the nature of these deficiencies, I think he says, these deficiencies arise upon the cash balance. Then I would be glad to know, whether in the accompts that he hath perused, and in the computation of those deficiencies, the several deficiencies of the cash balance arise upon the whole balance, or are appropriated to any particular suitors concerned in those balances?

Thompson. No part of the cash balance is appropriated to any particular suitor.

Mr. *West.* My lords, the Commons have now produced a very long, and as they apprehend, a very full and convincing evidence, in maintenance of the Impeachment by them exhibited against Thomas earl of Macclesfield, for High Crimes and Misdemeanors; and I am commanded to acquaint your lordships, that they do not intend to trouble this House with any further examination. But, my lords, the Commons, considering the length and variety of the several facts and circumstances that have been offered, are of opinion, it may be of service to that cause, in which their zeal for public justice has made them to engage, that the whole of what they have insisted upon or produced, should in such manner, as I am able to obey their commands, be shortly recapitulated and presented in one view to your lordships' consideration.

The Charge in general, and the several Articles of it, have been fully opened by those gentlemen who preceded me upon this occasion. The witnesses who have been examined, and the other evidence that has been read, have been fully considered, so far as they relate to those particulars, that were the immediate occasion of their being produced; I shall not therefore waste time, by enumerating once more the Articles of the Charge, nor by too minutely repeating the whole evidence that has been given; but shall endeavour to reduce this long and various examination to some general heads, that may express the substance of the general Articles, and then remind your lordships of what I can recollect to have been most materially offered in support of them. To this end, my lords, I beg leave, in the first place, to observe that strict union and connection there is between the crimes of which this Earl stands charged. Your lordships cannot but remark, that the Articles mutually support, and almost prove each other; so that if any one be admitted to be proved, it is difficult, if at all possible, to doubt the truth of the rest.

A wicked and corrupt design, and view to raise and procure to himself excessive and exorbitant gain and profit, was the fatal principle from which all this mischief sprung. It was this that prompted the earl of Macclesfield to extort those large sums of money, which he received from the several persons whom he admitted to the office of Masters of the Court of Chancery. The gratifying this avarice engaged his lordship to neglect every other consideration, to overlook that care he owed to the suitors of the Court, and to admit persons of small abilities, and every way unqualified for the discharge of so great a trust. This obliged him to connive at, and permit the fraudulent practice of paying the excessive price of their places, out of the money belonging to the suitors of the Court. That again, forced him to suffer, or rather to encourage the purchasing Masters to traffic and game with the estates of the suitors. There was no other way by which these liberal purchasers could reimburse themselves. And this circumstance, even after it was apparent the suitors were likely to lose a great part of their effects, reduced him to the unhappy necessity of refusing to take those measures that were necessary to prevent that practice for the future. And when the fatal effects of this unbounded liberty, which he permitted the Masters to enjoy, began to appear, then was he compelled to become a confederate

with the deficient Masters, to prevent its being known to the world. From hence sprung the unequal composition with Wilson: the partial orders for the payment of money: the private contribution to answer the most pressing demands: and from hence his own liberality to Lockman. But when all these methods proved ineffectual, and he found the cries of the widows and orphans had reached his majesty, then, my lords, did the Lord High Chancellor of Great Britain combine with these Masters, advise and persuade them to make false representations of their circumstances and accompts, in order to deceive his majesty, to frustrate his most gracious intentions for the good of his subjects, and to prevent (what he most feared) a parliamentary enquiry.

These, my lords, are the malignant consequences of that corruption of which the earl of Macclesfield is accused; and which the Commons apprehend to be perfectly consistent with the whole tenor of his actions, during the time of his being Chancellor.

The Commons began their evidence with that oath, which it was proved the Earl had taken, in consequence of the statute of the 12 Ric. 2, and which was administered in the usual and accustomed manner. I should not have reminded your lordships of this circumstance, if it was not for that unaccountable attempt, to quibble away the sanctity of an oath, and to represent it as a mere ceremony and form, for no other reason, but because it was read to him in French, and when he kissed the Bible, his lordship and the clerk said nothing to each other. They afterwards gave other evidence, relating to such profits as he had made of the office of Chancellor, which he did not admit in his Answer. But I do not apprehend it necessary to mention them particularly to your lordships.

The first general head of accusation against the Earl is, that he corruptly, illegally, and extorsively insisted upon, and received great sums of money, for the admission of several persons into offices relating to the administration and execution of justice.

To lead the way to this Charge, the Commons began their evidence with the Ninth Article, which relates to his taking 100 guineas from T. Bennet for permitting him to resign his office of Clerk of the Custodies, and for procuring a new grant of that office to Hugh Hamersley.

The Commons chose to begin with this Article, not because they thought the sum taken so considerable, as to have any great influence upon the judgment your lordships may give upon this occasion; but because the fact discovers the man, and fully explains what manner of mind he must be endued with, who could stoop to an action so low and sordid. This Article does of itself lay a foundation of probability for the others, in which he is charged with the extorting of much larger sums. It is true, his lordship in his Answer gives himself a very different character, and offers to produce a catalogue of his own generosities. What argument there would be in this, when produced, I cannot comprehend I will therefore endeavour to save your lordships that trouble. I can admit even more than is desired: instead of being generous, I will suppose his lordship (far from the truth) to have been profuse: yet still would it prove nothing: for surely, it is not a new character in history, that even squanderers should be rapacious.

To prove the particulars of this Article, the resignation of Bennet and the new grant to Hamersley were both proved. And as to the payment of the money, Mr. Cottingham, who was secretary to my lord Macclesfield, and who, through the whole course of the evidence, appears to have been his great agent and confidant: He owns the receipt of the 100 guineas, and swears he paid them to the Earl, within a day or two after he received them. He also owns the consideration, for which this money was paid, that it was for permitting Bennet to surrender his place. Were there no evidence but Cottingham alone, the Commons think they have sufficiently proved this fact: But the evidence of T. Bennet puts it beyond contradiction, and makes it manifest, that the 100 guineas were in a manner extorted. He swears, soon after he was admitted a Master, he was desirous to part with his place of Clerk of the Custodies; and to that end applied to Cottingham for my lord Macclesfield's favour, and acquaints him with the person, to whom he desired the new grant should be made: Cottingham upon this speaks to my lord, and some short time after tells Mr. Bennet, that neither my lord nor himself knew Hamersley. Your lordships may remember that the Earl, by his cross-examination, seemed to endeavour at some small triumph upon this circumstance. My lords it is not so wonderful that Cottingham should not speak truth, there is no giving evidence to the tone of the voice, nor the air and manner in which a conversation is carried on; more especially, if it be considered, that Cottingham was a man who doubtless upon these occasions would not have known his father without the mediation of gold. Bennet was surprised at this speech, as well he might, when Hamersley lived next door to Cottingham. However, Cottingham at last explained the mystery, by letting him know a present was expected by the Earl, and Cottingham himself owned, he did say the Earl insisted upon a present.

[Mr. West was here interrupted by the Earl of Macclesfield, who said, that Cottingham's words were not, That he insisted upon, but that he expected a present. Upon which occasion Mr. Onslow represented warmly to the Lords, that the behaviour of the Earl was irregular, and that the Managers ought not to be broken in upon while they were speaking. And then Mr. West went on.]

My lords, it is my duty to represent the actions of this Earl in the strongest light; and

the strongest light is the justest light. Upon recollection I do not think the word I used to be of force equal to the fact. My lords, the expectation of a Chancellor, communicated by a secretary, to a new made Master, is more than to insist. But be that as it will; Bennet, in answer to these expectations, represented the hardship of being obliged to pay money upon this occasion, when he had so lately paid a very large sum to the Chancellor; and by way of argument told him, that when he came into the place himself, he paid nothing; and his brother told him, that lord Cowper upon the like occasion had taken nothing, because as that noble Earl said, nothing was due. At last, my lord Macclesfield and his secretary being both inexorable, Bennet agreed to pay the 105*l.* After this agreement was made, Cottingham acquainted his lord with the bargain, and then told Bennet, that the Earl agreed to it: But withal, that it was a great favour he would take so small a sum; and Cottingham at the same time made this very remarkable declaration, That if Mr. Bennet would bring the 100 guineas, he need take no further trouble, for the Chancellor would apply to the king for leave for him to resign, and would take care of the other necessary steps. And accordingly the bargain was executed in that manner. For Mr. Bennet knew so little of the intermediate proceedings, that he has told your lordships he knows not how, or by whom the warrant came into the hands of the clerk of the patents.

It is difficult not to feel some indignation rise at the bare relating this meanness! Mean it would have been in any man: But for a peer of Great Britain, an earl, lord chancellor of the kingdom, and a chancellor so obliged and so dearly bought, to prostitute so many illustrious characters, in so low a manner as to become a broker for the hire of 100 guineas, is astonishing! But, my lords, when I consider that this earl was at the same time one of the lords justices of the kingdom, in a commission to execute some of the functions of majesty itself, I want words to express such a transaction in its proper colours.

My lords, I have mentioned the evidence relating to this point something the more particularly, because the proof comes up to the express words of the statute of the 12th of Rich. 2, and proves, as I apprehend, beyond contradiction, that the earl of Macclesfield disposed of this place for gift and brokage.

Before I quit this Article, I beg leave to observe to your lordships, that my lord Macclesfield in his Answer insists upon it to be the right of the chancellors to accept presents; and therefore owns he did in this case accept a present. But then he avoids, as he every where else does, the naming any particular sum that he accepted. I would willingly ask, why this precaution, if what he did was lawful and right? I would also observe, that there is something strangely equivocal in that part of his Answer, where he denies he insisted on 100 guineas, or any other sum. This answer both explains his extorsive method of proceeding, and almost demonstrates the practice of it. For it is very remarkable his lordship does not deny he insisted upon a present in general, but only that he did not insist upon any particular sum.

My lords, your lordships will find by the course of the evidence, that this artifice of not naming a particular sum was not peculiar to this instance; but my lord Macclesfield, whenever a Master's place or any other place was to be sold, carefully avoided fixing the price by demanding a certain sum. No,—It was more gainful to set every thing up to the best bidder, and resolve never to dispose of any office, till the sanguine purchasers, by bidding on each other, were artfully screwed up voluntarily to offer a present, as his lordship gently phrases it; but as the Commons think, they have proved the fact to be, a corrupt and exorbitant price, equal to the avaricious wishes of the seller.

The next instance to which the Commons called evidence, was the illegal sale of several of the offices of Masters in Chancery. Now, my lords, (not to be too minute in mentioning the evidence) it is manifest from the oath of office, which they take, from the commission granted to the Masters in conjunction with the judges, and from the evidence given by Mr. Meller relating to that subordinate jurisdiction which they exercise, that these offices do relate to the administration and execution of justice.

My lord Macclesfield, in his Answer to this part of the Charge, industriously is silent as to the particular sums which he received, although your lordships will observe, that payment of the individual sums charged in the Articles, has been proved by the persons themselves who paid the money. Kynaston and Bennet are express as to the payment of 1,500 guineas each; Mr. Elde is positive as to his carrying to the Earl 5,000 guineas in a Dutch basket; and Mr. Thurston swears, he left 5,000 guineas with lady Macclesfield. Now, my lords, as the Earl insists that it was a known perquisite of the great seal to accept of presents upon the admitting new Masters; why does he not own the receipt of the several sums with which he is charged? If it was a known and established perquisite, doubtless the sum payable would have been as known and established. And this consideration I apprehend to be the reason of his lordship's caution. He could not but feel the absurdity of his own argument, and yet I will admit as much as his lordship or his counsel can desire upon this occasion. His predecessors possibly may have accepted small gratuities from new Masters, after their admission. Therefore he may publicly, and without any other consideration, sell them to the best bidder for the most he could get. My lords, the argument would have been just as good, during the time that it was usual for the gentlemen at the bar to give new years gifts to the Chancellor, to prove he might have sold his favours, and

boldly suffered no one to plead before him, who would not farm his practice, and pay the full price of what it might be worth.

To support this imagination of its being a common perquisite of the great seal, my lord Macclesfield does in his Answer aver, that every one of the Masters I have named, did voluntarily, and of their own accord, send a present to his lordship on occasion of their respective admittances. How far it was a present the evidence I shall mention to your lordships will fully explain. At present, I beg leave to observe the equivocalness of these last words, On occasion of their several admittances. This was not accidental, but calculated on purpose to make the whole appear like a common and usual perquisite. As the words stand in the Answer, the natural construction is, that these Masters voluntarily made the usual present to his lordship after they were admitted to their offices: and yet the critical sense of the expression does not exclude the payment of the money, even by way of bargain, before their admission. For even in that case, the money may as truly be said to have been paid on occasion of their admittance. I should not have mentioned this part of the Answer, if it was the only instance of his lordship's deviating from truth. I should have imagined it to be an oversight, of either his lordship or his counsel. But by the observations that have been made by the gentlemen who opened the several Articles; contradiction, equivocation, and (I wish I could not say) untruth shine in every part, and appear to be the predominant qualities of the whole. My lords, I mention this, not only as an aggravation, but even as a proof. For what cause must it be that reduces a man of the abilities this Earl is known to possess, and of the character he did once enjoy, to make use of such means, such contemptible arts? Arts! unpractised by an innocent man, and, I doubt not, will prove useless to the guilty.

The fact upon the evidence appears to be thus, Kynaston, Bennet, Elde and Thurston, all concur in this circumstance, That they paid their money before they were admitted into their offices. Mr. Cottingham also owns that he received the money of Mr. Kynaston and Mr. Bennet, and carried up the basket of Mr. Elde, before any of them were sworn. All these persons likewise agree, and Cottingham confirms their testimony, that they applied to him as the proper person to recommend them to my lord Macclesfield, and to be informed of what sum they must offer, in order to render themselves acceptable to his lordship. The evidence of Kynaston proves it to be a direct bargain, for he swears, when he acquainted Cottingham of his having agreed with Rogers for the purchase of his place, that he offered but 1,000*l.* as a present to the Chancellor: upon which Cottingham said, He would not mention to my lord any sum under 1,500*l.* and when Kynaston agreed to give that sum, Cottingham again represented that it must be guineas, upon which the 1,500 guineas were paid.

Mr. Bennet, he says, that when he had agreed with Mr. Hiccocks, he also applied to Cottingham to know what sum was necessary to be paid the Earl. Cottingham agreed that a present was necessary, but he would not name the sum. Upon this, after Bennet had consulted with his brother and Mr. Godfrey, he again went to Cottingham, and offered 1,000 guineas; but Cottingham, dissatisfied with this, shook his head, and said, He would not go to the Chancellor with that sum; a great deal more had been given, and he hoped he would not lower the price. Bennet, however, still pressed Cottingham to offer the 1,000 guineas; to which Cottingham replied, There was no haggling with the Chancellor; and that if he would not give more, he might be absolutely refused, and lose the place. Bennet, struck with this reply, agreed to give the 1,500 guineas, though Cottingham graciously told him, he need not bring it in money, for Bank bills would do as well. I cannot help observing, that there was a strange caution used as to the payment of this money, altogether inconsistent with the nature of an established fee, or regular perquisite. Mr. Bennet sent his clerk to take out the bills in a feigned name, and for this reason, because otherwise they could not so easily be parted with. Cottingham, it seems, was something jealous of a man, who had the confidence to persist so long in offering but 1,000 guineas, and therefore the first word he said to him, when he repaired to the Chancellor to be sworn in, Have you brought the money? Bennet answered like a man, who perfectly well knew the family, He should not have ventured to have come without it. Upon this the money was paid, the Master was sworn, and the whole bargain fully executed.

These kind of bargains were now become so much the subject of common discourse, that the Earl thought it necessary to be something more cautious, and even Cottingham was not now to be so much in the secret as formerly. Mr. Elde applied to the Chancellor himself, and without any ceremony offers his lordship 5,000 guineas for this judicial office. The Earl, it seems, was not at all offended with this liberty, but answered with the engaging familiarity of a great man; Thee and I must not make bargains. I will treat thee in a different manner from others. My lord Macclesfield was as good as his word, for upon this Elde went to the secretary, and offered him 5,000 guineas, and he reported to his lord what passed: so that Cottingham was not dismissed this service at once; and the matter was so far agreed, that Mr. Elde went in a chair to the Earl's house, with his basket, in which he swears he put 5,000 guineas, and delivered it to Cottingham, who carried it up to his lord: but at the same time he swears, he did not know what was in it. Upon this Elde was introduced, and sworn into his office. Your lordships will observe that the basket was no part of the bargain, and therefore the scrupulous earl returned it back to him empty.

The last person examined as to this point, was Mr. Thurston, and he also was treated in a manner different from all others. He was certainly better recommended than any of them, and in the strength of that was very well received. Upon which he was sanguine enough to expect he should have the place. But, my lords, before he was recommended, Mr. Thurston likewise applied to Cottingham, and offered 5,000 guineas. Cottingham said he would report; but he was not trusted to return an answer.—In the mean time care was taken by the artful spreading of rumours, that Mr. Thurston should hear the Chancellor intended to give the place away to another person. Alarmed at this, and seeing all other methods of recommendation availed nothing, he applied to my lady Macclesfield; and after using several arguments to no purpose, as that his name had been printed in the public news to be the succeeding Master; that persons applied to him for the business of the office; and that his reputation and character depended on his success: he at last told her he did not expect to have the place for nothing, and therefore he left bills for 5,000 guineas upon the table, and so retired. These he found were the best arguments, and the best recommendation; for within two or three days after he was sworn into the office. This new way of proceeding deceived even Cottingham himself so much, that he even scrupled to take his own fees. I know not whether I ought to mention any other particulars; but by the questions put to the witnesses, when they were cross-examined, it seems as if his lordship would persuade you, that this was entirely a transaction between Mr. Thurston and my lady Macclesfield, and in which he was in no wise concerned. If your lordships can believe that the Earl intended really to give away this place for nothing, the Earl will be fortunate: for Mr. Thurston himself owned, he did not think he should have had the place, if he had not left the money.

I have repeated this part of the evidence more fully to your lordships, because, as I apprehend, it clearly explains the Earl's artful methods of extortion, and also proves that in this whole proceeding, the money, instead of being voluntarily given, was unjustly extorted, and that instead of being a present or usual perquisite, it was an illegal and corrupt bargain and sale of offices, relating to the administration and execution of justice.

The last thing I shall mention to prove this point is an evidence, to his lordship, most unexceptionable, I mean the earl of Macclesfield himself; for, my lords, consider once more his Answer in relation to this very point. What caution! what equivocation! what confusion of mind! that could make him even forget the time of his own Impeachment. What other circumstances of guilt! that during the course of this trial have been visible to your lordships. Bank bills taken out in feigned names, the secrecy with which the money was paid, the dead silence as to the price agreed: 1,500 guineas in a basket; another 5,000 guineas left on a toilette; and lastly, his own declaration to the Masters almost in a body; how much they, how much himself might be affected: I submit to your lordships what inference is to be drawn from all these particulars. The Commons are persuaded all flowed from this principle, that his lordship, the Masters, the seller, and the buyer, were all conscious that the whole transaction was illegal and corrupt.

Before I quit this head of the Charge, I must take notice of that part of his lordship's Answer, wherein he hopes that the receiving presents on such occasions is not criminal in itself, or by the common law of this realm; and that there is not any act of parliament whatsoever, by which the same is made criminal. I hope his lordship intends that the words, Or by the common law of this realm, should be understood as explanatory of the expression, criminal in itself; otherwise it supposes a very strange distinction. For surely an action cannot be conceived to be criminal in itself, and at the same time not contrary to the common law of this kingdom. Is it possible for any one to imagine, that corruption in the officer is not the necessary consequence of being obliged to purchase his place? This is *in terminis* the reason of the statute of Edward 6. Is it possible for any one to imagine, that oppression of the subject must not be added to this corruption? Or, can the man, who sells these places, with no other view than to satisfy his own avarice, retain his integrity, and be a severe or competent check upon the actions of those officers, to whom he has sold? And that is the reason of the judgment reported by Moor [Moor, 781 Stockwith and North,] viz. That the sale of offices is *malum in se*, and therefore fineable. But when, to what I have now said, I add the consideration of the oath enacted by the statute 12 Richard 2, (his lordship will be pleased to add his own opinion and apprehensions,) I do not conceive it possible to doubt, but that the sale of offices relating to the administration of justice, is criminal in itself, criminal by the common law, and criminal by act of parliament.

The next point to which the Commons gave evidence, is the necessary consequence of what I last mentioned: I mean the admitting persons to the office of Masters, who were of mean substance, and every way unqualified for that trust. The evidence given of the deficiency, now in several of those offices, is so full and uncontestable, that I shall avoid the repetition of it, and only just name Mr. Thompson, and refer your lordships to the report made to the council, the orders of the Court of Chancery, and the other papers now upon the table. Their being deficient at this time, is a violent presumption, and that in point of law is some degree of proof, that they were of small substance at the time of their admission. How else is it to be conceived that Masters, who have been so short a time in their offices, should be

so much in arrear? Kynaston was admitted but in August 1721, and in 1724 there appears a deficiency of 26,908*l.* T. Bennet is admitted but in June 1723, and in little more than a year there is a deficiency of 16,075*l.* And it is remarkable, that both these Masters have sworn all they were owners of in the world, was not sufficient to have paid the vast prices they gave for their offices. Yet these men were chosen out to be trusted, one with near 50,000*l.* and the other with near 100,000*l.* of the money belonging to the helpless and the miserable. By the skill my lord Macclesfield shewed the other day, in endeavouring to prove a man illegally worth 1,000*l.* or 1,500*l.* who had owned himself to be worth nothing; your lordships may see it was not want of knowledge how to make an enquiry, that made his lordship neglect it. It was because he never once concerned himself, whether they had substance or not. The sum he himself was to receive, was his only consideration, and therefore his only care; for as Mr. Bennet has expressly declared, he never once asked him, either before or after his admission, any one question in order to be informed of his private circumstances.

And yet, my lords, these are the men whom his lordship, as Mr. Waller has particularly sworn, thought fit in open Court, and while he was sitting in the sacred seat of truth and justice, to declare men of as great fortune, abilities and skill, as had ever sat in that Court. I much more readily concur in the truth of the other part of his lordship's declaration, and proved by the same witness, that he had great satisfaction in the having admitted most of the Masters himself. The reason Mr. Waller gave, in answer to some quibbling questions of his lordship's, for his particularly remembering this remarkable speech, is clear and convincing to every man; that the astonishment he was struck with at the hearing made him to remember it. And happy would it be for his lordship, was it possible ever to be forgotten!

But what could make the earl of Macclesfield break out into this panegyric? A reason so mean, and at the same time so gross, that I almost wonder even his lordship would venture to act upon it in public. A day or two before this happened, a Master died, and a new purchaser was to be invited.

I have just now mentioned the satisfaction his lordship had in the sale of these offices. The effect of which was, that the Earl connived at and permitted the unjust method that was practised, for the purchasing Masters to pay the price of their offices out of the money belonging to the suitors of the Court. This practice the Commons charge to have been notorious, and the evidence produced to your lordships proves that it was so. Godfrey, Conway, Kynaston, and Bennet swore, that this circumstance induced them to become purchasers; and indeed as to them, the fact proves itself, even though they had not sworn it to be so. For they have both owned, they were not able to buy without it; nay, they were so low that even the 1,500 guineas, they paid the Earl himself, was out of the suitors' money. And thus far the earl of Macclesfield himself has owned in his Answer. But alas! that would prove nothing, if it was not accompanied with a fact, that cannot be disbelieved; my lords, he has repaid the money?

After this, I think, I need not repeat the evidence so minutely as to explain the particular method in which this fraud was transacted: the whole seems obviously calculated for no other end or purpose, than to induce persons of small abilities to become purchasers, by facilitating and making easy the method of payment. And indeed it was so easy, that I wonder his lordship did not meet with persons, who would agree to give one half of the money for an opportunity of running away with the other; and if they had, I do not see but his lordship's defence would have been just as good as it is now. Such a price might with as much reason be called a perquisite, as his condescending to take but 5 or 6,000 guineas, when no one would give more. It is true my lord Macclesfield does in his Answer say, that he was ignorant of this practice. But I apprehend his lordship to be as much mistaken in this, as he has been in other particulars: for, my lords, it appears by Mr. Bennet's evidence, that he not only knew of this practice, but endeavoured to conceal it.

It happened, that when this Mr. Bennet delivered his accounts to the privy council, he concluded with a very remarkable article; "Item, in the hands of persons of ability and honour, 9,075*l.*" My lord Macclesfield, at sight of this particular, asks him the reason of it; Mr. Bennet explains it, That as to 1,575*l.* he meant his lordship, and as to the residue, Mr. Hiccocks, of whom he bought, had detained so much of the suitors' money in his hands, by way of payment for his place, and at the same time he complained to his lordship of the hardship with which he had been used. The consideration that induced him to give so large a price, was his being immediately to receive a very large cash; and yet the first time he waited on Mr. Hiccocks for that purpose, he could get but 1,500*l.* and that upon the hard terms of giving a receipt for 9,000*l.* During this conversation, Bennet swears the Earl said, with some concern, "That his accounts were made up the worst way in the world, for every body would now judge, that what he paid for his office came out of the suitors' money, and that what had been so much suspected would be now discovered, and what he himself had taken so much pains to deny, whenever he was asked the question." After this his lordship and Bennet enter into a serious consultation, how to make up this affair. The Chancellor bids him go to Mr. Hiccocks, to try what he would do. But it seems he could not be brought to do more, than to lend 2,000*l.* which Bennet absolutely refused, and insisted upon its being given him, or not at all. He reported this to the Earl, who displeased at it, said, Hiccocks

should pay 2,000*l.* and that he himself would repay the 1,575*l.* but it should be in such a manner, as that Bennet should not know in what manner it was done. Most profound politics this! Bennet afterwards told your lordships, that he found the Earl intended to trick him out of this money; for several times and places were appointed for payment, without any effect. And therefore the accounts were delivered in, and the story comes out. Your lordships certainly observed, that my lord Macclesfield was very much offended with Mr. Bennet's evidence, and therefore took care to cross-examine him most accurately. But that fatality which constantly attends guilt, was so strong upon him, that the answers given by this and almost every other witness, to the questions proposed by the Earl, and his counsel, evidently, as I apprehend, destroy his own Answer, and confirm our accusation. But, my lords, it is not only the answers of the witnesses, but even his lordship's own questions that afford evidence against him. For to what part of the Charge am I now speaking? Why to that, wherein he is accused of knowing and endeavouring to conceal the practice of paying the purchase out of the suitors' money. And what does his lordship ask! Did not you at this meeting tell me, that if Hiccocks would pay 2,000*l.* you then would make up the rest yourself? By his lordship's own confession, therefore, Bennet was with the Earl upon this occasion; they did talk upon the subject, Bennet has informed your lordships. Hiccocks retaining the suitors' money was part of the conversation. Else why should he pay 2,000*l.*? His lordship did concert how to make up this affair, and consequently how to conceal the whole. To this question of the noble lord's, Bennet answers consistently with what he had said before, That he did not say, if Mr. Hiccocks would pay 2,000*l.* that then he would stand the rest. And the reason he gives is good, he was not worth the money. Your lordships remember the other part of the dialogue. I shall only add, that the Earl being angry at this evidence, asks Mr. Bennet, And how could you as an honest man, offer to buy a place, when you were not worth the purchase money? I submit to your lordships, whether it was not as honest for him to buy without money, as for his lordship to sell without right.

I have now stated to your lordships the fact, as to this scandalous practice. And I think it can never be thought reasonable to suppose the earl of Macclesfield only ignorant of what every one else knew: or that he did not know of what he endeavoured to conceal. And if it is certainly true, that the office of Chancellor is an office of the highest trust, it is as true, that every wilful neglect of what is necessary to be done, in order to discharge that trust, is criminal. It cannot be doubted, but that this practice was unjust and fraudulent upon the suitors of the Court. It cannot be doubted, but that the earl of Macclesfield knew of this practice. It cannot be doubted, but that the Chancellor was the proper person, because, in fact, he was the only person, who could, *ex-officio*, either remedy or prevent this abuse. What ought to be the consequence of these premisses, the world will learn by your lordships' judgment.

Hitherto, my lords, avarice, uncorrupted avarice! has been the only principle of this Earl. In what follows, your lordships will perceive apprehension and fear begin to mingle in all his actions; and for this reason the bankruptcy of Dormer was to be concealed, that the clamours of the world might be hushed. It has appeared in proof to your lordships, that upon Dormer's absconding, the deficiency in his office amounted to upwards of 52,000*l.* for the account upon the table, which reduces the balance to 49,000*l.* was made up long after the Masters had been obliged to contribute their 500*l.* each.—When Dormer run away, it is natural to imagine, that even this Chancellor should have turned his thoughts to the security of the suitors: not because it was his duty so to do, but as Mr. Dormer was a Master whom he had not had the satisfaction to admit himself, he might with the more security have given himself the show, at least, of acting vigorously in relation to his affairs. By the evidence that has been given, it appears his lordship's behaviour was quite the reverse; my lord Macclesfield, instead of being solicitous for the good of the suitors, was apprehensive only of the loss that might happen to himself, by sinking the price of places, and thereby defeating that gainful trade he carried on in the sale of them. But this thought was attended with another consideration, that this open acknowledgment of the bankruptcy of one Master might induce the world to suspect the abilities of the rest. and as he best knew what care, what circumspection he had used upon their admission, so he was determined to prevent an incident of that kind. With these views, therefore, every step that was taken was mysterious, and the deficiency itself with the utmost caution kept secret; so secret, that at last some of the Masters themselves, his own Masters, for that very reason, refused to contribute any farther towards it. It is a bottomless pit, says one; We know not what it is, says another.

The first step the Earl took was to direct Mr. Rogers and Mr. Hiccocks to carry on a private negociation with Dormer for his return into England, assuring him, in his lordship's name, that his person should not be confined, provided he made an assignment and discovery of his estate and effects. Upon this Dormer returns, and executes an assignment; but I do not find he was ever examined upon interrogatories, or that any of his creditors attended, in order to enquire into the truth of his discovery. Your lordships observe, that the promise of liberty was conditional; but Dormer, and the Earl, though for very different reasons, were equally afraid of this commitment; and therefore his lordship took care not to direct any

proceeding, that might lay him under a necessity of doing it. If there was nothing else in the case, this behaviour was sufficiently gross. But, my lords, it was still worse; for Mr. Lightboun has acquainted your lordships, that soon after Dormer's failure, he waited on my lord Macclesfield, and told him, that he suspected the account given in by Dormer was not fair and just; and that therefore he ought to be committed for example's sake. This witness added another circumstance, that justifies what I have before suggested to your lordships, as the reason of the Earl's conduct. He says, that in this conversation with his lordship, he intimated and gave broad hints of his suspecting the abilities of some of the other Masters; he represented that the year 1720 had been a very fatal year, and might affect the Masters as well as other people; that what had been might be, and several other matters of this nature. Your lordships remember the manner in which this evidence was given, there was an air of probability and truth that appeared in it; he owned indeed, when the noble Earl asked the question, for fear, I suppose, lest your lordships should want proof of there having been such a discourse, that he did not name any Master in particular whom he suspected. He did not know how far an action might lie, and if known, it would make him unacceptable to his brethren, and himself might be made uneasy in his office, and several other reasons of that kind; and therefore he chose to express himself in general terms. Your lordships will observe that the Earl was very early in this resolution, some way or other to patch up this affair of Dormer's, so far at least, as to make it last his time: for Mr. Kynaston has informed your lordships, that when he was in treaty with Mr. Cottingham to be admitted successor to Mr. Borret, he objected this very deficiency of Dormer's as a reason why the Chancellor should not insist upon so large a sum, since the consequence of it must naturally lessen the value of the office. But he made light of it, and said, It would soon be made up. Mr. Edwards also, who succeeded Dormer, said he would never have bought the office, if he had not been assured the deficiency would have been made good. Here your lordships may also remember, that my lord Macclesfield, by cross-examining this gentleman, laboured to prove, that the Masters had actually agreed, in all events, to make good Dormer's effects. Mr. Edwards said, he could not say it was actually agreed, he hoped they would, and by conversation he had imagined they were inclined so to do, &c. Upon this the Earl asked, From whom then had you those assurances that it would be done? His lordship (ever fortunate in his questions!), I believe, was not well satisfied with the answer; for says Edwards, I had them from Cottingham and Godfrey. Their names and qualifications are well known to your lordships.

The next step that was taken, relates to the composition of a debt of 24,046*l.* due from one Wilson a banker, to the estate of Mr. Dormer. This composition the Commons do aver the Earl did direct and establish, in an unwarrantable and clandestine manner. On the other hand, my lord Macclesfield does in his Answer say, that it was done in the proper and usual manner: your lordships will judge of the truth between us. The Commons, to prove their averment, have produced the original instrument of composition, by which it appears that this debt of 24,000*l.* was to be discharged for the sum of 1,463*l.* in money, and an assignment of 10,000*l.* or a proportionable part of what should be recovered of a desperate debt of 22,600*l.* due from one Poulter (who also is a bankrupt) to Wilson.

The introduction to this affair was thus; Mr. Edwards, to whom Dormer assigned his effects, acquainted the Chancellor that Wilson proposed a composition, but apprehended he had no power to conclude any such agreement. To this the Chancellor agrees, and therefore advised him to apply to the Court by way of petition for that purpose. Edwards followed this advice, and petitioned. Upon which the Earl referred the matter to Mr. Hiccocks, who made his report, which being annexed to another petition, the composition was confirmed. In the Answer which the Earl gave to the second petition these words are inserted, "Of which give notice forthwith;" To what purpose these words were inserted, I cannot comprehend, unless it was to deceive the poor Master, who trusted him, into ruin, by craftily laying a ground-work for throwing the blame of the whole upon him, unless he could divine to whom this notice was to be given. For his lordship took care not to give any directions, as to what persons, or in what manner it should be done.—During this whole transaction Wilson was never examined upon interrogatories; no one creditor ever summoned to attend; the character of Poulter perfectly unknown, or by what they did know, they might have reasonably suspected what afterwards happened; no knowledge of Wilson's affairs, but what he communicated himself; the first proposal he made was accepted; no consultation with any other of Wilson's creditors; and to shew how useful that might have been, it has been proved to your lordships, that Wilson has paid several of his creditors their whole debt.

This was the care the Earl thought fit to take of the suitors of the Court: Doubtless he imagined, that though more vigorous measures might secure more money, yet they might at the same time make the circumstances of the Court too public; for, at the same time, his lordship took abundant caution to prevent any of these particulars coming to the knowledge of the suitors, or of the world. For, my lords, not one of these facts appears upon any record or register whatsoever; the whole was a private and clandestine transaction between his lordship, two or three Masters, and the bankrupt himself. Your lordships have a certificate from the proper officers for what I now say,

"That none of these petitions, reports, or orders, were ever regularly drawn up, or filed."

My lords, this caution, this secrecy, this mystery, is a strange way of proceeding for justice and equity; but if the contrary be supposed to have been his intentions, the whole is of a piece, natural and consistent.

Permit me, my lords, once more to observe upon his lordship's cross-examinations. And, first, he very nicely examined Edwards, as to what he had received by virtue of this composition; and certainly it receives a wonderful justification from Mr. Edwards's owning that he received in October last 1,000*l.* The next point he examined to, was his lordship's diligence in securing Dormer's effects. The Commons brought evidence to shew, that some of Dormer's estate had been concealed, and, for aught I know, it may be true, that one Goodfellow, by his lordship's means, did give the administrator (appointed since his lordship's dismission) the first notice of it. The fact is, that a parcel of old hops, 500*l.* the worse for keeping, were not long since sold for the precise sum of 100 guineas. To which I shall only say, that I wonder his lordship chose to recall that sum into your lordships' memory.

My lord Macclesfield hitherto might possibly meet with the approbation of those Masters, on whom he vouchsafed to smile: Both he and they seem to have considered themselves as in an interest separate, and quite opposite to that of the suitors. His view was to keep the circumstances of the Court secret, and to prevent any thing that might happen to lessen his profits in the sale of places: Theirs was to retain the money of the Court in their hands, and for that reason to hush any public clamour that might occasion the taking it away. I think I am not mistaken in this conjecture, because I find his lordship himself was of the same opinion: For this was the great artifice and machine, which his lordship employed, to terrify them into a contribution of 500*l.* each, towards supplying the deficiency of Dormer's office. To shew how much this custody of the money was in the Masters' thoughts, your lordships will be pleased to remember, that all the Masters owned, that it made a very considerable article in what they called the profits of their places. Mr. Holford (on whom the only blemish I know, is the misfortune he has had of being a Master) acknowledged, in answer to a question proposed by a noble lord, "That he understood it so; for he never proposed to lock the money up, but to employ it for his own use." In fact, it was what the Masters bought, and what the Chancellor sold; or rather, widows, orphans, lunatics, the wards and suitors of the Court were the wretched, unhappy merchandize, in which the earl of Macclesfield thought fit to deal. When Kynaston was to buy, he swears that Cottingham, or Rogers, or both, recommended it to him as being the senior office, and therefore the best. And Cottingham himself owned the first day of this trial, that he had acknowledged to a committee of the House of Commons, that he said to Mr. Kynaston, "You have purchased a very good office; for there is a great deal of money in it." But, my lords, the thing proves itself: Consider the nature of the office, the attendance and labour that is required; deduct the unlawful interest made of the suitors' money; how can the honest fees (even supposing it lawful to sell) be worth 6, 7, 8, or 9,000*l.* I leave this for my lord Macclesfield to explain, and shall at present take it for granted, that the Masters esteemed the custody of the money to be part of their bargain.

That there was, in fact, a contribution by the Masters of 500*l.* each, is evident from the receipts now upon your lordships' table; and Mr. Holford fully explains the method that was taken to draw them into it. He received, soon after the report of Dormer's bankruptcy, an order from Mr. Cottingham to prepare and bring in his accompts to the Chancellor; soon after that, it was intimated to him, that a contribution of 500*l.* was necessary towards supplying the deficiency of Dormer: Upon which he paid his money, and his accompts (though ready, as he swears expressly) were never afterwards called for.

Lightboun was another Master, who received orders to prepare his accompts; but not paying his money, Cottingham, some short time after Dormer broke, asked him if he had not heard of the proposal to contribute 500*l.* Lightboun owned he had: Cotttingham then said, it was necessary to raise some money to go on, and that, if he contributed, possibly the money might be repaid. Still Lightboun was inflexible, and said it was a dangerous step, and he would not pay the money. Upon this refusal, he informed your lordships, that he was looked upon as a very troublesome fellow among the Masters, and little arts were used to make him uneasy in his office: But when this likewise proved ineffectual, the Earl himself at last condescended to talk with him, and, in the beginning of the year 1722, he was taken into his lordship's study; and the Earl told him, he was sorry to hear he did not pay; desired him to consider the consequences, and how dangerous it was, not to take care of Dormer's affair. Upon this, Lightboun still refused to pay, saying, he did not know how far a contribution of this kind might be construed to be an undertaking of the Masters to answer one for the other: At the same time he boldly and honestly represented to the Chancellor, how cautious his lordship ought to be: that this method was no cure for the mischief; and that as to its being proposed by the senior Masters, it was no argument to him, and ought to raise some jealousy in his lordship, since they were visibly endeavouring to withdraw from the Court, and came into a project of this kind, only to keep up the credit of the Court, till they found an opportunity of selling their places at great rates; and a great deal more to this purpose; and concluded with a peremptory refusal to contribute.

However, as the other Masters paid their

money, the Earl was not discouraged, but depended upon it that some time or other (as he told Mr. Edwards) he should be able to force Mr. Lightboun to comply; and therefore, as he thought, they had by this means contrived a fund to answer any demands upon Mr. Dormer's office, he went on, just as if there had been no deficiency at all. By the orders that have been read to your lordships, and by the evidence of Mr. Edwards, who paid the money, it appears that he made several orders for the payment of money, without any regard to that due proportion all the suitors of the Court were entitled unto. His lordship in his Answer says, it was not incumbent upon him, *ex officio*, to declare an average. If it was not his duty, my lords, for God's sake, whose duty was it? This is too gross to be a sin of ignorance. A barrister of but a term's standing knows, nay, it is obvious to the lowest capacity, that where several persons have demands out of one common fund, and that fund proves to be defective, all ought to be upon the same foot, and be paid in an equal proportion. Mr. Lightboun, Mr. Edwards, both represented to him the hardship of one creditor's receiving his whole demand, and another creditor, who had equal right, losing his whole debt. The reason, therefore, of this otherwise absurd proceeding could only be, that the declaration of an average would publish that deficiency to the world, which he had used so many stratagems to conceal.

I cannot conclude this part of the evidence, which relates to that criminal design the Earl carried on of concealing this deficiency, and of deceiving the suitors of the Court, without reminding your lordships of one other instance of this noble Earl's great regard for truth and veracity. Mr. Atwood, who was the solicitor in the cause of Harper and Case, in which the deficiency of Dormer being mentioned, the Earl took occasion to declare, That indeed he had heard of the deficiency, but nothing of it had ever come judicially before him; and that he knew nothing of it but as public news. This, my lords, was after he had paid 1,000*l.* towards it himself. After what I have said, I shall not attempt to aggravate this prostitution of the seat of justice. But this did not satisfy his lordship: That his dissimulation might for ever remain upon record, he thought fit to pronounce an order, that is now upon your lordships' table, and dated no longer ago than in December last; in which he directs the Masters to enquire, whether there was any deficiency in Dormer's office; and whether the suitors were likely to lose any part of their money, or not.

Your lordships know the contract that was made between the Chancellor and the Masters: I therefore shall not waste your time in mentioning evidence to prove, that they, who gave such vast prices for the custody of the money, did not neglect the opportunity of employing it for their own use. The proof is but too visible: They who are rich, confess it; and they who are poor, dare not deny it: It was the necessary consequence of his lordship's extortion; and that put it out of his power to take those measures that were necessary to prevent that practice. The misfortunes of the South Sea year were so universal, that surely any man of even common sense would have been upon his guard: My lord Macclesfield knew, that these Masters gamed with the suitors money themselves, or for an extravagant interest lent it to those who did: He knew that this was the occasion of Dormer's deficiency: He knew that the other Masters had it still in their power to do the same; therefore he permitted it: He took no measures to prevent it: therefore he encouraged it.

But what could engage this Earl (whose understanding is no wise questioned), after so fatal a year, thus to risk his own character; and what perhaps he values more, his own fortunes not only upon the understanding, the integrity, but even the good fortune of a parcel of men, whom he had thus picked up, without either enquiry or care? My lords, as the borrower is to the lender, so a corrupt Chancellor is the servant of his confederate officers. He durst not put a stop to their practices (though his own estate was embarked with theirs), lest resentment and revenge should make them discover the infamous secrets, with which they were entrusted. How durst he demand security from those whom he admitted, knowing they were able to give none? Surely, my lords, no reason but such as I have now mentioned, could induce his lordship to neglect (and a long neglect amounts to a refusal) the obliging these Masters to give security, or else to call them to a strict account, as to their cash and securities, after he had been informed by Mr. Lightboun, that some even of the Masters were to be suspected. But Mr. Lightboun this day went further; he represented the danger of trusting men with such vast sums: That this credit had been the occasion of all the losses in the Court, and therefore proposed a scheme of security, to prevent any losses for the future. The Chancellor did not absolutely reject this proposal; that was too gross even for himself: He therefore desires Mr. Lightboun to put it in writing: It is done; and his lordship most carefully kept it by him for two years, without taking any notice of it. But, my lords, there is one circumstance in this neglect, that in equity (and surely a Chancellor will not decline to be tried by that rule) makes his lordship answerable for a very large sum in one case only, without entering into any the other consequences of his crime. Mr. Kynaston, your lordships remember, was proved to be deficient in the sum of 26,000 odd hundred pounds; and yet, my lords, this very Kynaston did, in the year 1722, propose to his lordship to give land, or other security, for the effects with which he was entrusted. I know his lordship will object what this gentleman has before sworn, in relation to his own circumstances. But what is it to the suitors, whose land it is,

provided it be pledged for their safety? What answer, my lords, must we give to our fellow subjects, those unhappy people, who are undone, I will not say by Kynaston's and the other Masters' deficiency, but his lordship's own wilful neglect? I will not take up any more of your lordships' time upon this head. In what I have already mentioned, it is proved, notwithstanding what the Earl in his Answer says to the contrary, that he knew the Masters converted the money of the suitors to their own use. And he himself owns, that he did not insist upon any security from them. In a late order of his own making, he has recited it not to be usual in the Court of Chancery for the Masters to give security; and therefore in his Answer covers himself under the practice of his predecessors. My lords, the reasonableness and necessity of security depends upon the greatness of the trust committed, and the qualities of the persons entrusted. In Dr. Edisbury's case, though there was a stop, yet there was no loss, for his estate proved sufficient to answer all demands. And therefore his lordship's argument, in my apprehension, amounts to this, That because his predecessors did not insist upon security from persons who wanted none, therefore he might justly entrust those who were able to give none.

My lord, I am come to the last head of our Charge, and your lordships will now see the earl of Macclesfield abandoned to all his fears! Even avarice forsakes him! The dread of a parliamentary enquiry sits heavy on his mind; and I firmly believe, he now repents his having illegally taken this money, because he parts with it to prevent, if possible, that punishment he most justly deserves for having received it. He finds all his arts in vain to hinder his practices being known to the world; and therefore his whole study is now bent how to ward off their coming into parliament.

The first instance of this appears in the case of Mrs. Chitty. The fact is thus: an order was made for the payment of 1,000*l.* to her, part of a sum upwards of 11,000*l.* belonging to her, and which had been paid into the hands of Mr. Dormer. She, it seems, assigns this order to a very importunate solicitor, one Mr. Lockman, who, as he has told your lordships, diligently pursued the Chancellor from London to Kensington, from Kensington to Westminster-hall, and the Court of Chancery itself. He represented to his lordship the circumstances he was in; that he had compounded some South-Sea contracts, and absolutely wanted, and insisted upon his money to complete his agreement, and set himself at liberty. The Chancellor, finding himself so pressed, was at last forced to promise him, that he would take care to get the money paid. Upon this he summons a meeting of the Masters, in order to persuade them to pay the money by a contribution of 50*l.* each; and in the mean while it had been given out among them, that such a contribution was expected. Cottingham himself, as Mr. Lightboun says, told it to him, and at the same time made a fresh demand of the old sum of 500*l.* and asked him what answer he would send to the Chancellor? Lightboun prudently replies, he would deliver his answer himself; and in the mean while he applies to the other Masters, tells them the ill consequences of what they had done, and works them all up to a resolution not to comply with this fresh demand. He desires them not to give the Chancellor false hopes, but to speak their mind freely. And thus prepared, they all repair to his lordship's house. I need not upon this occasion repeat the names of the witnesses, for all the Masters present concur in giving the same testimony. His lordship began the conference with asking Mr. Lightboun, in a very angry tone and manner, why he did not pay his 500*l.*? Who replied, he had often told his lordship the reason, and that he neither could nor would pay, and was confirmed in his resolution, by his having since heard all, or most of his brethren repent of their compliance. The Earl, without regarding Lightboun's reason, proposed the necessities of the Court to the other Masters, in relation to this 1,000*l.* The Masters not seeming willing to comply, he used many arguments to persuade them to it: he desires them to consider the consequences; the occasion presses, and clamours grow strong; and if this affair was not taken care of, Dormer's deficiency must break out; and therefore what he proposed was the only way to prevent a parliamentary enquiry. Upon this Lightboun interposed, and said, If it was so, he could not help it: that he had rather lose the keeping of the money and securities, than hold it upon those terms. The Chancellor replied, But that is not the worst: suppose the House of Commons should in a committee of justice resolve, that your offices relate to the administration of justice; that the buying them is contrary to the statute of Edward 6, and therefore forfeited. Consider (says he) though it may affect me, as to the disposal of these places for the future, yet it will affect you much more in the loss of your places; and therefore, upon the whole, desired them to agree to the contribution. My lords, the Masters were proof against his lordship's eloquence, and seriatim refused to comply. Upon which the Earl was struck, and with a vast concern said, Then I will pay it myself. What guilt, what fear must this noble Earl be sensible of, thus to part with that money he had so sacrificed his honour to get! In this manner the Earl parted with his Masters, and Lockman returns again to the charge; and at last meeting the Chancellor in the room behind the Chancery Court, he got a promise from him, that Mr. Cottingham should pay the 1,000*l.* But at the same time his lordship (I suppose to get rid of so troublesome a suitor) advised him not to engage with the widow Chitty; for if her money in the Court of Chancery was all her fortune, that sum was all she was like to have. Soon after this, Cottingham paid the money. But it seems he forgot to desire Lockman to keep the secret;

so he told it about so much, that Cottingham meeting him rebuked him for it, saying, Can't you fare well, but you must cry Roast-meat? Your lordships undoubtedly remember, that the Earl endeavoured to shew, by cross-examining, that he had generously given this 1,000*l.* to Mr. Lockman, out of mere charity and compassion to his miserable circumstances. Lockman replied very reasonably, that his circumstances were not so low as to want his charity; for he might have discounted the order; and he did not think it a favour that he was paid his own.

The evidence I have now last mentioned to your lordships, even without the assistance of other proof, almost maintains the whole Charge. By the testimony of a cloud of witnesses his lordship here confesses the sale of offices, and owns that sale to be illegal: he acknowledges his being acquainted with Dormer's deficiency; and at the same time endeavours to conceal it: He in a manner confesses his own guilt, pronounces sentence upon himself, and therefore proposes methods to prevent a parliamentary enquiry.

But, my lords, there is still more behind: there is not only a connection among the Articles, but the crimes charged in them rise upon each other. Hitherto his deceit has extended only to the subject, but now he attempts the throne itself. His majesty graciously directed an enquiry to be made into the disorders of the Court of Chancery. His lordship knew that this dutiful House of Commons would not interpose in the affair, till his majesty's commands were obeyed, and therefore he now summons all his arts and skill to ward the blow, and deceive his majesty into a belief, that the world had taken a false alarm; and that the circumstances of the Masters are much better than they were represented to be; that they were able to answer all demands; and that consequently the suitors of the Court were not in any danger. His agents are sent among the Masters, to encourage them to stand by each other; that they should make a bold stand, and defeat the designs of their enemies. He himself becomes their counsellor, and advises, and (without enquiry or regard to either truth or justice) he persuades them to make such a subscription to their accounts, as might mislead the council in any report they should make to his majesty.

All his thoughts, counsels, and measures are now swift and precipitate. Your lordships have heard evidence of the several discourses of Cottingham and Dixon; the meeting of the Masters at Mr. Edwards's, and the last conference with the Chancellor himself; all within two or three days of each other, and all tending to the same end of deceiving the king, and preventing the parliament. My lords, all the Masters concur in the meeting at the Chancellor's house: when, it seems, his lordship, upon considering their several accounts, declared his approbation of Mr. Holford's subscription; and without any the least enquiry into their abilities and circumstances, he advised them all to make the same subscription as Mr. Holford had done.

Your lordships have likewise heard it proved, that the Masters, in order to make a shew, were advised to assist and stand by each other. Bennet and Conway are both instances of this counsel's being put in practice; and—But why should I abuse your lordships' patience with particularly recapitulating the evidence that has been this day given? I observed the attention with which it was heard, and any thing I can say, will only weaken that impression it must naturally have left on your lordships' mind. I shall therefore conclude the whole with an observation from the parliament roll of Henry 4. "Complaints and subsidies belong to the Commons, judgments belong to the Lords, and redress is the glory of the crown."

My lords, the Commons have now discharged their duty; they have declared their grievances, explained the crimes, and produced the offender. They are assured the king will, of his fatherly goodness, grant a just redress, and apply a proper remedy; and they doubt not but your lordships will pronounce a righteous judgment.

Then the House adjourned to Wednesday next, at ten of the clock in the forenoon.

The Fifth Day.

Wednesday, May 12.

The Lords being seated in their House, the serjeant at arms made proclamation for silence, as also another proclamation, That all persons concerned were to take notice, that Thomas earl of Macclesfield now stood upon his trial, and they might come forth, in order to make good the Charge.

L. C. J. *King.* Gentlemen, You that are counsel for the earl of Macclesfield, may now proceed.

Serj. *Probyn.* May it please your lordships; I have the honour to be counsel for the noble lord within your bar, the earl of Macclesfield, who stands impeached for High Crimes and Misdemeanors in the name of all the Commons of Great Britain.

My lords, when I consider the importance of this Charge, in respect to the noble Earl impeached, the great experience and wise conduct of the several gentlemen of the House of Commons, who are entrusted to manage the prosecution, and the great variety of arguments they have used to enforce and aggravate their Charge, it is with the utmost concern that I presume to appear before your lordships in his defence; not but that I am well assured of the truth and justice, the strength and fulness of the defence which may be made in his behalf, but out of real consciousness of my own inability to discharge so great a trust.

Unequal to it I should have been, had the longest time been allowed me to prepare myself;

but I shall now appear much less capable, having so very little, so few days' notice of your lordships' pleasure in appointing me for that service.

If therefore I shall be so unhappy, as to offer any thing in this case less proper, or correct, than might otherwise be expected from me, I hope I shall obtain your lordships' greater indulgence.

The offences, which are charged to be committed by the noble Earl impeached, are contained in many Articles, no less than twenty-one in the whole; but the gentlemen of the House of Commons have been pleased to wave several of them, and, I hope, when your lordships have heard us, and our evidence, you will be pleased to acquit him of all the rest.

These Articles have been conceived with the greatest caution, and opened with the greatest art, heightened with every circumstance that may induce resentment, and urged against the noble Earl impeached with a particular zeal, well becoming the great concern which those gentlemen always shew for what they apprehend the public service, and the faithful, vigorous discharge of the great trust reposed in them by the House of Commons.

The impeached Earl is pursued back from his late resignation of the high office of Lord Chancellor, through every stage of public life; and, with inquisitive eyes, they have also viewed and pryed into even his most private transactions, so as not even the least indiscretion has passed unobserved.

Some actions, which in themselves are truly innocent, and are declared to be so by the constant, uniform practice of all the great and honourable persons that have gone before him, are here represented as highly culpable.

Others which, we humbly apprehend, are not only innocent, but commendable and meritorious, even his personal acts of charity are imputed to him as crimes.

But in one respect I must beg leave to congratulate the impeached Earl, and think it is his great felicity, that in this so public an examination, so strict and rigid a scrutiny into his whole conduct, at least ever since he was first advanced to the great seal, there is not one objection made, one instance given of corruption, partiality, or oppression, in his own personal administration of justice; and therefore, I hope, I may well conclude (since it is admitted by the prosecutors themselves,) that he has denied justice to no man, he has delayed justice to no man, he has sold justice to no man.

The principal objection that seems to be relied on by the learned Managers, and the only one which, I humbly apprehend, can any way affect the impeached Earl in the present case is, that possibly he may have been too easily led into a good opinion of some persons, who, in the eye of the world appeared to be men of good substance, and fair reputation, persons that were recommended to him by others of undoubted honour and credit; that he has admitted these persons into offices of great trust and profit under him; and they have at length been found not to have deserved the good opinion which he at first had been persuaded to entertain of them.

Some of these officers have been negligent, others unfaithful in the discharge of their duty; and in their crimes it is now attempted to involve the impeached Earl as their principal and patron.

And, in regard the principal complaints against the noble Earl are founded upon the disposition of the offices of Masters in Chancery, therefore it has been thought necessary (in the preamble of the Articles exhibited) to represent the Masters in Chancery as offices of very great trust, sworn to serve the king and his people, and associated to the Lord Chancellor by particular commissions, for his assistance in the due administration and execution of justice.

My lords, what use Masters in Chancery might formerly be of, and what assistance to the Lord Chancellor they might anciently give, I know not; but at present they seem to be of very little advantage to him in the determination of causes in Court.

They sit indeed in court, at proper distances, on each side the Chancellor, and sedulously attend his motions, but never pretend to advise or interpose in judgment.

They have likewise the honour to be named in commissions of association to the Lord Chancellor; but the whole body are not always named in such commissions, but only such particular persons as his majesty is pleased to think fit: and this appears from one of the oldest commissions that has been produced and read before your lordships, I think it was the commission granted to Robert Southwell and others, the 9th of October, 4 Edw. 6, wherein there were not more than four or five of the Masters named; though I believe in the latter commissions their names are usually all inserted. But what power or authority is given them by this commission? None at all, that they can execute of themselves in the absence of the Master of the Rolls, or some of the learned Judges named therein; for the Judges and the Master of the Rolls are only included in the Quorum.

But, my lords, commissions of this kind are not uncommon: clerks of assize, and other officers, are named in the commissions of association to the judges of assize, in their respective circuits, yet act as ministerial officers only under them.

And I humbly apprehend, that in this case it has been sufficiently proved before your lordships, by a gentleman (that was once a very good Master in Chancery) that they now pretend to exercise no judicial authority whatsoever.

They examine and state such particular matters and facts as the Court is pleased to refer to them for its better information, and which the Court itself has not time to look into; they settle accounts depending between the suitors

of the Court; they look into, and take counsel's opinions upon titles of estates bought and sold by order of the Court; and they tax costs.

This seems to be their principal concern; and yet in this they are not absolute judges, they determine nothing finally; for when they have made such enquiry as the Court directs them, they only certify their opinions of the several matters referred to them by way of report, which report is not conclusive to the parties; for either of the parties that thinks himself aggrieved by such report, may take exception to it; and the Court, on hearing such exception, will controul the Master's report, and determine as they think just. And in case the parties themselves do not controvert the matter reported, but totally acquiesce and submit to it, yet is not the Master's report a final judgment, nor will bind the parties thereto, till it be afterwards confirmed by the order of the Court: it receives its authority and sanction from the order of the Court, and has none without it.

But it was certainly very rightly judged by the learned Managers, and they have thought it very material for them, to advance the reputation of these offices, in order to make it more penal to have any present or compliment made to the great seal, upon the admission or resignation of the Masters.

Another observation was made by one of the learned gentlemen of the House of Commons, in relation to their general Charge, which is this; they charge, that the Earl, in or about May, 1718, by the great grace and favour of his majesty, was constituted Lord Chancellor, and did thereupon take the usual oath for the due execution of that office, and such other oaths as have been accustomed; in order, as I conceive, to insinuate that he had acted contrary to, or in violation of, some particular oath which had been administered to him.

The Earl in his Answer admits, That on the 14th of May, 1718, he took the oath of office as Chancellor, which is set forth in his Answer; that at the same time he took the oaths of supremacy and allegiance, but no oath of office, except that above set forth.

To this part of the said Earl's Answer, the learned Managers are pleased to object, That the oath prescribed by the statute of Richard the 2nd, had been frequently administered to the noble Earl, but that he had forgotten that oath in his Answer, as well as in his conduct and practice.

And to prove this fact, Mr. Eyre (one of the officers of the Exchequer) was produced, on whose evidence it did appear (as we apprehend the fact truly is) that when the honourable privy council are annually assembled in the Court of Exchequer, to prepare a list of names of proper persons to be presented to his majesty, for his choice of sheriffs for the year ensuing, and the judges then also attending, one of the officers of the Court reads over the very words of the statute of Richard the 2nd in French, and then the Bible is presented to the noble lords, and others of the privy council, and also to the judges present, which they kiss, and then proceed to the nomination of the sheriffs for the several counties in England.

My lords, I must observe that upon this occasion no formal oath is administered in pursuance of this act of parliament; nor any entry or record made of any oath taken by all or any of the persons present.

The words of the act of parliament are, That the chancellor, treasurer, and other great officers therein named, the justices of the one bench, and of the other, the barons of the Exchequer, and others, who shall be called to ordain or make justices of peace, sheriffs, or other officers therein named, or any other officers or ministers of the king, shall be firmly sworn that they shall not ordain, name, or make such officers for any gift or brokage.

This act of parliament doth direct an oath to be administered, though the precise form of the oath is not prescribed.

But the act of parliament itself can't be called that oath which itself directs; nor the reading or hearing that act of parliament read, be called the administering or taking that oath: the oath must be something distinct from the act of parliament which directs it.

Therefore, my lords, I humbly submit it to your lordships, that the reading of this act of parliament, upon this particular occasion, is rather used as a particular exhortation or admonition to that august assembly, how they ought to demean themselves in that single instance of their duty (the choice of sheriffs) than to have an universal obligation in respect to the nomination of all other officers in general.

If this was intended to be administered as an oath of office, then being once taken by any person in office, it need not be taken again, during the same person's continuance in the same office; but this act of parliament is annually read over upon the return of every election of sheriffs, and seems to be particularly applicable to that duty.

Sheriffs are indeed very great officers, have whole counties under their influence and jurisdiction; and therefore very singular care ought to be taken in their nomination.

The chief justices and judges present upon that occasion, use the same ceremony of kissing the book; and if this should be interpreted an oath, it would be of great extent, and the consequence of that must be, that the best offices should have no candidates for them; for the latter part of the oath, directed by this act, is, That none, who pursueth by him, or by other, privily or openly, to be in any manner of office, shall be put in the same office, or any other.

So, if this be considered as an oath, every one of the great persons that have taken it, must be indispensably obliged not to give any office to any person that have even asked, or made application by himself, or any one in his behalf, for that or any other office whatsoever.

If this construction, which is now contended

for, were admitted, a great many persons might be thought guilty of perjury, who themselves never apprehended it; and how far the guilt of this perjury may be extended, is not easy to determine.

But, my lords, it is not the noble Earl's intention to incur the censure of quibbling himself out of the obligation of an oath, or the letter of an act of parliament; we beg leave to insist, that in whatever light this transaction is taken, it can't be construed to be the taking an oath within the intention of the Charge contained in the present Articles, which is, that he took the oath of office, and such other oaths as have been of right accustomed.

This Charge, my lords, must be confined to some reasonable time, wherein these other oaths charged must be supposed to be taken: I apprehend it can relate to such oaths only, as the noble Earl took at the same time, when the general oath of office was administered to him.

And the Earl, by his Answer, certainly understood it in this sense; otherwise, to make a complete Answer to so general a Charge, he must have been under a necessity, to have set forth all the oaths which he hath taken in his whole life-time; at least, since his first oath as Chancellor.

He took the oath of office as Chancellor the 14th of May, 1718; this proceeding in the Exchequer is proved to be in November following: who would understand that this Charge intended to couple two transactions together, that in themselves were so distinct and remote?

Having thus endeavoured to remove these objections, which seem to be no part of the Charge, but only used as introductory to it, I shall now proceed to the Charge itself.

The first and general Charge is, That the said Earl, not regarding the obligation of his oath, or the duty of his office, but, entertaining wicked and corrupt designs and views to procure himself exorbitant profit, by divers unjust and oppressive practices, whilst he continued in the office of Chancellor, did illegally, corruptly, and extorsively take and receive to his own private use great sums of money, in breach of his oath, and violation of his duty as Lord Chancellor.

This is insisted on by the gentleman who first spoke, as an offence of the deepest dye, which strikes at the very root and foundation of all civil government; and to render it more odious, it is introduced as an act of the highest ingratitude to his majesty, as well as injurious and oppressive to his subjects. To demonstrate this, it is represented, that upon the said Earl's being appointed Lord Chancellor in May, 1718, his majesty was pleased, of his grace and bounty, to bestow upon him the sum of 14,000*l.* in money, and to grant him several other yearly pensions and payments, which another gentleman (in observing the evidence given on this head) was pleased to say, did, together with the usual salary, fees and profits belonging to the office, amount unto near 10,000*l.* per annum, and this was strongly urged as enough to satiate the appetite of the most avaricious, and prevent any illegal and corrupt extortions of other sums from his majesty's subjects.

To this, my lords, we hope your lordships will think the noble Earl has put in a very plain and satisfactory Answer.

That he had, for several years before his advancement to the great seal, the honour of serving his majesty in the office of Chief Justice of the Court of King's-bench; and as a reward for good and faithful services in that high office, his majesty, out of his royal grace and favour, upon the 10th of March, 1715, was pleased to advance him to the dignity of a peer of this realm; and for the better support of that honour, to grant him a pension of 1,200*l.* per annum, and to declare his royal intentions of giving the said Earl's eldest son an office of considerable profit, when opportunity should offer.

That in May, 1718, his majesty was pleased to appoint him Lord Chancellor; on the 14th of the said month of May, he took the usual oath of office, and at the same time the oath of supremacy and allegiance, and no other oath of office.

That during the time he continued in the office as Lord Chancellor, he enjoyed the usual salary, fees, and perquisites, which Mr. Pynsent (who was called as a witness to this particular) proved to be about 11 or 1,200*l.* per annum.

That his majesty also granted to him the salary of 4,000*l.* per annum, during his continuance in that office; which was not particular in his case, but constantly granted to, and enjoyed by all his predecessors.

That to this, his majesty was further pleased to sign a warrant to him for 14,000*l.*, as mentioned in the Articles; whereof 2,000*l.* was the usual allowance to other lord chancellors, or keepers, towards the expences in entering upon the office: and the rest was his majesty's royal munificence, and received as such.

The noble earl likewise admits, that his majesty was also pleased to grant his only son, then going to travel, a yearly pension of 1,200*l.* determinable upon his majesty's granting him one of the offices of teller of the Exchequer for life; which was accordingly granted; and he came into the possession of it, in 1719, whereby that pension determined; so that the yearly payments to his lordship were but 6,400*l.* per annum, besides the pension of 1,200*l.* to his son, which soon after determined upon his coming into possession of his present office.

This is all the revenue which the noble earl received during his continuance in this great office: and, I humbly presume, this can't be thought excessive, considering the great fatigues, difficulties, and expences, that necessarily attend the execution of this high office: perhaps other offices might be found, that are less difficult in the execution, and yet superior in profit.

But, my lords, the objection does not seem to

turn that way; but rather, that this noble lord, not contented with these several instances of royal grace and bounty, illegally, corruptly, and extorsively took and received other great sums from other persons to his own use.

This the noble earl expressly denies, and says, that during his continuance in the office of Chancellor, or at any other time, he never once had a design or view, or even a wish, to raise to himself any exorbitant gain or profit, much less to extort money by any unjust or oppressive methods whatsoever.

And indeed, my lords, this is a charge that gives the noble earl at once the greatest trouble and surprize; he never suspected a crime of this sort, so contrary to his nature, and the whole tenor of his life, could ever be objected to him: and to shew that this is without any foundation of truth, the present circumstances of his family and fortune (when laid before your lordships) will abundantly demonstrate and convince mankind, that he is not that rich, that avaricious, and corrupt man, he is represented.

As he has received large bounties from his majesty, he has been abundantly liberal to persons that were proper objects of charity; and his purse has been always open to succour and relieve the distressed.

This, my lords, brings me on to the material and principal part of the Charge, which is, that he did illegally, corruptly, and extorsively take and receive to his own private use great sums of money, in breach of his oath, and violation of his duty as Lord Chancellor.

The instances given of this corrupt taking of money refer to the several sums mentioned in the five Articles, which the gentlemen of the House of Commons were pleased first to enter upon, and which relate to the several sums of money received from the four Masters in Chancery, mentioned in the fifth, sixth, seventh, and eighth Articles, and the Clerk of the Custodies mentioned in the ninth.

If the Charge contained in these several Articles be a crime, it must appear to be so in its own nature; to be an offence at common law; or made such by some act of parliament. I submit it to your lordships, that taking a present or taking money from persons upon their recommendations or nominations into offices, though they do concern the administration or execution of justice, is not a crime in its own nature; it is no act of immorality; it is no act of injustice to any man; for no person has any particular right to these offices, but his advancement must be owing to the favour or friendship of him who has the right and power of nomination: and if the office itself be valuable, so is the right of nomination to it, and may be esteemed as part of the estate of that person to whom it belongs. And if we consider it in this light, I think it can't be denied but that every man has a natural right to dispose of his own estate or interest, his own friendship or favour, upon what consideration he pleases: it is his own, and therefore he has a right to make any just and legal advantage of it.

From hence, my lords, I would beg leave to infer, that the taking a gratuity or sum of money from any person, upon his nomination to one of these offices, is not criminal in itself, if simply considered, and distinct from the good or evil consequences that possibly may attend it.

And, in the next place, I humbly submit it to your lordships, that it is not a necessary consequence, that every one that buys an office, must and will behave himself either unfaithfully or corruptly in it. Instances may be given, and those very ancient ones, of offices of justice, offices of the highest character in the administration of justice, that have been purchased, and purchased from the crown.

In Mr. Madox's History of the Exchequer, page 43, we find that Richard Fitz-Allured, in the time of king Stephen, fined fifteen marks of silver, that he might sit with Ralph Basset to hold the king's pleas; and in page 743, of this book it appears, that Ralph Basset was the king's justicier. Here we see one of the justices of the King's-bench purchasing his office for fifteen marks in silver.

And in the same page of the said book it appears, that in the seventh year of king John, Walter de Gray gave the king 5,000 marks 'pro habenda Cancellaria Domini Regis tota 'vita sua, et pro habenda inde Charta Domini 'Regis.'

These, my lords, are great instances what the ancient usage was, in purchasing even the highest offices of justice.

Inferior offices were doubtless disposed of in the same manner; and if this had been thought criminal, we should have had some instances in our law-books, wherein they would have appeared to have been adjudged so.

I beg your lordships' leave to consider in the next place, and that very briefly, whether this can be taken to be criminal within the words of the statute of Edward 6, which has been taken notice of by some of the learned Managers.

By the 5th and 6th of Edw. 6, c. 16, it is enacted, "That if any person or persons shall at any time thereafter, bargain and sell any office or offices, or take any money, fee or reward, or any other profit, directly or indirectly, for any office or offices, which shall in any wise touch or concern the administration of public justice; all and every such person and persons that shall so bargain and sell, or take any money, fee, or reward, for such office or offices, shall not only lose his right, interest and estate in such office or offices, but also every person and persons that shall give or pay any sum of money, reward, or fee, shall be adjudged a disabled person in the law, to have, occupy, and enjoy the said office or offices."

This is the purport of this act of parliament, so far as it relates to the offence charged in these Articles; and I apprehend it cannot be extended to the present case.

Here are no prohibitory words that persons shall not bargain and sell offices, nor any words declaratory that they could not do so before, by common law.

And all penal laws are to be construed favourably for the benefit of the subject, and not extended beyond the letter.

But, on the contrary, by the many provisoes after contained in this act of parliament, it is plain that all offices, before the making of this act, might be bought and sold without offence; and many offices are authorised and intended, by the express provisoes of this act, to continue to be bought and sold for the future.

For by the first proviso in this act, it is declared not to extend to any office of inheritance; which is an express declaration that offices of inheritance were to be bought and sold even after the act should take place.

The second proviso I apprehend is stronger to our purpose; for by that it is declared, "That this act shall not extend to any contract made or agreed before the first of March then next, but all such bargains and contracts to be good, as if the act had never been made."

And, my lords, there is yet a farther proviso, "That this act, or any thing therein contained, shall not extend, or be prejudicial, or hurtful to any of the chief justices of the king's courts, commonly called the King's-bench and Common Pleas, or to any of the justices of assize, as now be, or hereafter shall be, but that they and every of them may do in every behalf, touching and concerning any office or offices to be given or granted by them, as they, or any of them, might have done before the making of this act, any thing therein contained to the contrary thereof notwithstanding."

What is that which these great officers of justice might have done before the making this act? They might have given, granted, bargained, or sold the respective offices under them in such manner as they thought fit; and by this proviso they may continue to do so still.

What alteration then is made in the law by this act of parliament? Here is no new offence created, but a particular penalty given, to be inflicted on all that shall buy or sell offices, not contained in any of the subsequent provisoes; that is, the contract made between the buyer and seller is declared void: the party selling loses his estate and interest in the office; and the party buying is rendered incapable to hold and enjoy it.

In Castle's Case, Cro. Jac. 644, it was adjudged, that when a statute appoints a penalty for the doing a thing which was no offence before, and appoints how it shall be recovered, it shall be punished by that means, and no other.

Therefore, my lords, in the present case, supposing that the presents proved to be sometimes made to the impeached Earl, upon the nomination of Masters in Chancery, can be interpreted a selling of an office, or taking money for an office, within the intention of this act of parliament, it can be liable to no other punishment than what the act itself directs; and this the noble Earl has already suffered by his loss of the great seal. The statute inflicts a penalty upon the seller of an office, only of forfeiting the nomination to the office for the future; and no other penalty or punishment ought to be inflicted by virtue of this act of parliament; and consequently the offence, as now charged against the noble Earl, and the facts, as proved before your lordships, cannot subject him to any punishment or judgment, that can be prayed in this prosecution, upon the present Articles of Impeachment.

But, my lords, there is another answer, which the noble Earl has been pleased to make to this part of the Charge against him, and which I hope your lordships will have great regard to.

It is the example of the many great and learned persons who have executed this high office before him.

The precedent is too ancient for us to discover when it was first made; and I humbly submit it to your lordships, that the immemorial, constant usage and practice of it in all ages since, will sufficiently establish the reasonableness and justice of the precedent.

The same objection, which is now made against the noble Earl impeached, in this particular instance, might undoubtedly have been insisted upon against every one of his predecessors.

And I doubt not we shall be able to prove, that these officers have made presents to the great seal, as frequently and constantly as the several vacancies have been supplied.

This noble lord has only followed the example of his predecessors; he has trodden in their steps: and I must beg leave to say, there must be something peculiar in his case, if the same paths, which led them to honour and immortality, shall betray him to infamy and disgrace.

This objection, my lords, some of the learned Managers of the House of Commons were well aware of; and therefore they have endeavoured to distinguish the present from the preceding cases.

They admit it to be true, that small sums have been formerly given to, and accepted by former Chancellors, upon admissions into these offices, by way of compliment or present, and this without a crime: but then they urge, that the sums now complained of are exorbitant; they are bargained, haggled for, and given unwillingly by the purchaser; and that there is a great difference between a present given, and a price bargained for and paid.

My lords, I can't deny but that this distinction is just: a present implies a voluntary gift of something less than the value of the thing given, or promised, for which that present is to be made; a price, the full value of the thing contracted for.

And I think the Earl's present case is exactly within this distinction, and justifies the Earl's Answer in this respect.

The present which Mr. Kynaston made to the Earl, upon his admission, was 1,575*l.* The

price he paid Mr. Rogers for the purchase of his office, was no less than 6,000*l.*

The present which Mr. Thomas Bennet made to the said Earl, upon his admission, was 1,575*l.* The price he paid Mr. Hiccocks for the purchase of his office, was 7,500*l.*

Mr. Elde, upon his admission into the office, upon the death of Mr. Fellowes (the former Master) made a present to the late Chancellor of 5,200*l.* But when his lordship considered the greatness of the sum, he returned him all but 1,800*l.*: when at the same time Mr. Lucas offered 6,000*l.* for the same office.

Mr. Thurston has also proved, that he left Bank-notes to the amount of 5,250*l.* sealed up in a letter at the Earl's house, before his admission, upon Mr. Borret's death. But when the lady, to whom the letter was directed, discovered how great the sum was, she, without any application made to her for that purpose, returned all but 2,000*l.*

And this, my lords, was done before the seal, before Michaelmas-term last, before the Masters were ordered by the privy-council to give in their accounts; and when the present prosecution was not in any sort apprehended: and it is likewise proved, that Mr. Lucas, upon this occasion, renewed his offer of 6,000*l.* for the office; and Mr. Thurston was admitted for a less sum of money.

These, my lords, we humbly hope and insist, are not instances of a corrupt mind, and avaricious, rapacious temper, such as some of the gentlemen Managers have been pleased to represent them. On the contrary, we humbly hope, that, upon the evidence already given, it plainly appears, that these payments were not sums of money extorted and unwillingly paid by the gentlemen who were admitted into the several offices that have been mentioned, but presents voluntarily made, and pressed upon the Earl impeached, with such application and earnestness that shews, that, at the time they were offered, the persons offering thought they were not equal to the value of the favour they expected. And their importunity was so great, that Mr. Thomas Bennet, one of the present Masters, that has been so often examined, would endure no delay, but impatiently pressed to be sworn into his office, at a time when the late Chancellor was sick, and by his physician thought to be dying. This may rather be said to be extorting a favour from the impeached Earl, than money from Mr. Bennet, even upon his own evidence.

My lords, we do humbly insist, That as the noble Earl within your bar was not conscious of any crime in accepting these presents, so he is justified in so doing, by the example of many successions of great and learned men, who have done the same in the like case. And should this now be adjudged criminal, what numbers of very good and just men must be involved in the imputation of this guilt? It must necessarily spread an universal cloud of infamy and reproach over the ashes of many just and upright sages of the law, whose memories have hitherto been preserved as venerable and sacred; men who despised riches, and abhorred the remotest appearance of bribery, and never were, nor were suspected to be corrupt; yet these men thought it a just duty, owing to themselves and successors, to adhere to the known and just rights, the ancient established fees and perquisites of their offices; and believed it as justly due to them as the salaries which were annexed to their said offices.

My lords, we shall beg leave to shew that this has been the ancient usage and constant practice of all ages; and the several great persons, who successively have presided in the greatest courts of law and equity, from the earliest times to the present, have disposed of the several offices in their gift, as they became vacant, for money.

Frequent instances of this kind will be produced before your lordships, in our evidence.

My lords, I would not be understood to mention this, so as to insist that the actions or examples of the greatest persons will alter the nature of good and evil, or give a sanction to any action that in itself is really criminal; but only as an argument (and I apprehend it a very strong one) to prove, that it was the concurrent opinion of all those great persons that have taken presents, upon their disposition of offices, that it was not criminal to do so.

The opinion and judgment of so many learned persons must have very great weight in a case of this nature: And if in strictness it can't be said to justify the action, it will certainly very much extenuate the guilt.

In the next place, the gentlemen are pleased to proceed to shew, that Masters in Chancery, being, as before represented, very great officers in that Court; the noble Earl within the bar, for his own corrupt gain, has admitted persons into that office that were not duly qualified for it, and forced them to give great prices, and bartered and haggled for such prices.

This, my lords, is urged as the greatest inconvenience, that men who have no substance of their own should be trusted with such large sums of other persons money.

It is insisted, that honesty, probity, and good substance, are absolutely necessary for the suitors' security; yet inferior persons have been put in by his lordship, who had little or no substance of their own: That they paid great sums for their places, yet paid it out of the suitors money; and that this was known, connived at, and encouraged by the noble lord that then presided in the Court of Chancery. This therefore could only be with a view to enhance the price of those places: For what would not people hazard, who had nothing of their own to lose? If any profit could be made, it was their own; if any loss, the suitors; for no security was given to answer the effects in their hands.

My lords, it must be confessed, that this way of arguing has a very popular appearance, and finds an easy access to every ear.

The Court of Chancery must be admitted to be the greatest court of justice in the kingdom; and it must be also admitted, that the business of that Court has of late years increased, in proportion, more than any other court; and consequently, much greater sums of money are now deposited in the hands of the Masters of that Court, than formerly.

This may possibly make it to be wished, that some better method might be found out, for the suitors' security, than has been formerly used.

But in what manner this reformation is to be made, is beyond the power, or at least the prudence of any one judge or chancellor to determine; the ancient practice of every court is the law of that court; and it would be a dangerous experiment for any one presiding judge to vary it: If any ill consequence to the suitors attended such an alteration, he that made the alteration would certainly be answerable for the consequences of it; for every suitor will then say, Why was the ancient practice varied? He that made the alteration surely did it for his own advantage; and then every argument that in the present case is only colourably made use of, in that would be obvious and natural, and be applied with double force.

He that acts without a precedent, acts upon the peril of his own judgment: But he that acts against precedents, against ancient, concurrent uniform precedents and practices, is without excuse, and justly to be suspected of some particular view, in the language of the present Articles.

The earl of Macclesfield, when he was first entrusted with the great seal, found the suitors' money in the custody and care of the persons who were then Masters of the Court, and without any security given or demanded for it.

He considered that his predecessors were a succession of great and honourable persons, of equal if not greater, sagacity and learning, probity and experience, than any that ever had sat in any court; they found the Masters in possession of the suitors' money upon the same establishment, and they left them so.

Was it proper or prudent for him to oppose his single opinion to the united judgment of so many wise and great men that had gone before him? Surely, No. Inconveniences had been seen before, and deficiencies had happened, and those deficiencies had been supplied by a voluntary contribution of the other Masters then in being. Why was not security then demanded? And why not all the other Masters then called upon to bring in their accounts, to prevent the like deficiency for the future? If that method had been thought either prudent or practicable, no doubt it would have been then taken: And this being then not done, or ever before or after attempted to be done, is a good argument, that it was not expedient, or, it may be, possible to be done, at least upon the single authority of one Lord Chancellor. And that therefore is a good excuse for the omission or neglect in that particular in the present case.

But, my lords, it is now objected, that as the sums of money in the Masters' hands are greater than ever, and it may not be proper to alter the ancient method of the Masters receiving and keeping it for the suitors' benefit; yet greater care ought to be taken of the persons to be admitted Masters, upon vacancies and resignations. And therefore another part of the Charge against the honourable Earl impeached, is, that he appointed persons to be Masters of the Court, that were not proper or sufficient either in substance, knowledge, or probity.

These are said to be all essential requisites in the character of every good Master; but grossly neglected in the present case: and a reason is given, or (if I may presume to say) rather invented, in the present case, that it was to the advantage of the Earl impeached, to put in such unqualified persons; because such persons would be drawn in to give larger prices for their places, and consequently it redounded to the Earl's advantage.

My lords, I must beg leave to observe, that in the evidence that has been given, there has not been any one instance proved (or at least, that I can recollect) that any of these Masters were really insufficient in any of the particulars objected to, at the time of their respective admissions into their several offices; or, at least, that the noble Earl impeached then knew that they were insufficient, or had any reason to suspect it: they were all gentlemen of good families, well educated; each of them a barrister at law (which, I submit to your lordships, is not the least expensive education), and had all visible fortunes, and appeared as persons in very plentiful circumstances.

Even Mr. Conway and Mr. Thomas Bennet (who are the persons intimated to be the least qualified in point of fortune and substance) had at that time very good estates in their possessions; Mr. Bennet had then also a very valuable office, clerk of the custodies; had married a lady of considerable fortune, kept a coach and decent equipage in town; was the son of sir John Bennet, though a younger son; and the whole family then seemed to be in a very prosperous condition. Mr. Thomas Bennet has proved to your lordships, that he was worth 20,000*l.*, in the year 1720. And it does not appear, that the late Lord Chancellor was ever informed of any incumbrances upon his estate (though now, he says, there are great ones), or that his circumstances were less at the time of his admission, than in the year 1720. Surely then the late Lord Chancellor had at that time no reason to suspect his being unqualified in point of substance.

Mr. Conway had also then a very good, visible estate in land, an estate of 4 or 500*l.* a year; had been receiver-general of several counties in Wales, had discharged his office punctually, and produced his *quietus* to the Lord Chancellor before admission.

Mr. Kynaston had, at the time of his admission, an estate of 400*l.* a year in land, timber

of very considerable value, and a personal estate of 2 or 3,000*l.*; and moreover, was a gentleman of a very good family, and unblemished in his character.

Mr. Thurston, I think, the gentlemen of the House of Commons do not object to in any respect. None of their reputations, in respect of their probity, have been called in question, till their late misfortunes: and as to their other personal endowments, their good sense and judgment, I need only refer to your lordships' own observations, upon their several examinations in the present trial.

But, my lords, great stress seems to be laid upon the Masters paying for their offices out of the suitors' money; or replacing the money so paid out of the suitors' money.

Suppose that was the practice amongst the Masters; does it appear to your lordships, that the impeached Earl had any notice, or the least information given him of this practice? Or if he had known it, how could he possibly have prevented it? Certainly, no other way, than by ordering all the money immediately out of their hands. And then another difficulty would have occurred, how that money should have been disposed of? Public societies would not submit to be under the immediate direction of the Court of Chancery; and no private person could be trusted with so great a sum, or give security for it.

The Masters of the Court are in nature of cashiers; they subsist upon trust and credit; and no security can be expected to answer the quantity of cash in their hands, more than in the case of a common banker. People will trust men in credit with the custody of 1,000*l.*; when, if they proposed to borrow 100*l.* on security, would scruple to let them have it. But the objection is carried yet farther: it is said, if security could not be expected, why were not their books inspected, upon one's transferring to another, and schedules taken of their effects?

To this it must be answered, That the Lord Chancellor has not leisure to attend this duty personally. And what other person can be appointed more fit to be trusted (as an inspector of the going-out Masters' accounts) than his successor, who is to stand charged with all the money and securities, and the whole effects transferred?

Can any obligation incline a man more strongly to care and exactness in business, than private interest? And his own private interest will oblige him not to make himself accountable for more than he actually receives, and has transferred to him. And when the succeeding Master has examined the effects of his predecessor, by proper schedules approved of by himself, they are then transferred to him by a general order of the Court, and he becomes accountable for what is so transferred.

This, my lords, we humbly submit, has been the ancient usage and practice of the Court in these cases; and that the same method was used by the present Earl impeached, the same care taken, as had been formerly in the like cases by any of his predecessors.

But, my lords, I would beg leave to submit it, that supposing it to be possible that greater care might have been taken by the late Lord Chancellor, in inspecting the schedules and transfer of the effects of Masters to their successors: does it appear that the suitors of the Court have been any way injured or prejudiced by that pretended neglect? Or, would the greatest care, the greatest exactness in this particular, have given the suitors any greater advantage or security? Certainly not at all: For let the effects of the preceding Master be never so carefully and justly examined and scheduled, and after that transferred, and actually delivered to the succeeding Master; has not the new Master, to whom these effects are thus carefully and justly delivered, the same power over them, to manage and dispose at his pleasure, as he would have had, in case such transfers had been made with less caution and exactness, as in the present case?

If any corrupt agreement had been made by any new Master, upon coming into his office, and previous to this transfer, to have repaid or replaced any sum of money, before borrowed by him, either for the purchase of his office, or any other occasion; could not he have complied with this, and paid it out of the suitors' money or effects, the very next moment after they were transferred to him? And would the previous care and caution in any degree obstruct or prevent his so doing? I apprehend, not at all; for as soon as the Master is in possession of the whole money and effects, he may return any part that he pleases to his predecessor, by virtue of an agreement before made for that purpose; which would be as much to the prejudice of the suitors, as if what was so returned to the predecessor, after a transfer made, had been retained in the first instance by the predecessor, and never actually delivered over to his successor.

Therefore, my lords, this security, as projected, is but imaginary; and gives the suitor no greater advantage than he had before; and consequently this ought to be no ingredient of complaint against the impeached Earl.

But, in the next place, it is strongly urged, that though the noble Earl during his high offices, might not have leisure to attend little occurrences, or regard small neglects; yet the going-off of Mr. Dormer should have awakened him; some care should, upon that accident, have been taken. If what had passed before was only supineness, this was a wilful neglect; and not enquiring into the state of his affairs, and securing his person and effects for the suitors, was concurring in defrauding the suitors.

My lords, this was indeed a remarkable occurrence: The going-off of Mr. Dormer was unforeseen, and unsuspected: His person was withdrawn, and out of the power of the Court; but all imaginable care was taken to secure his effects,

The two senior Masters immediately were directed to enquire into his effects, secure his chambers, and put a stop to all transfers in his office. What more possibly could be done in this emergency, his person being out of the power of the Court?

A proposal is made on his behalf, that if the then Chancellor would engage that his liberty should be secured to him, he would return, and discover and assist to get in his effects. This is thought reasonable, and for the suitors' benefit, and accordingly complied with; and thereupon the unhappy man returns, and not only makes the best discovery of his effects, but delivers all in his power for the benefit of the suitors. Could any thing be more advantageous to the suitors, or contribute more to their interest than this?

The impeached Earl had indeed promised his person should not be imprisoned; and it would have been the highest breach of faith to have departed from it. Had not that promise been made, Mr. Dormer had not returned, nor any discovery been made by him; but by this means they had the benefit of the best discovery that could be had, and the best assistance the noble Earl could give them. He never denied or discouraged any application that was made by or for the interest of the suitors in that respect, nor endeavoured to conceal the true state of his effects, and the condition of his office. And as to the expressions insisted on to delude the suitors, by saying, as has been objected, that Mr. Dormer was only gone to take the air, and would soon return; though these expressions have been much insisted on, in the arguments against the impeached Earl, I do not remember that they have been mentioned in the evidence.

And, my lords, to shew that the impeached Earl did all that was in his power to render what assistance he could give the suitors; when a new Master was to be appointed; he left the disposition of the office to the direction of the other Masters: And Mr. Edwards gave no less than 5,000*l.* for that office of Mr. Dormer's, which was wholly applied towards the making up his deficiency. By this enquiry, Dormer's real estate was secured to the suitors; and it was expected by the Earl himself, and by Mr. Edwards, who succeeded Mr. Dormer, that the rest of his deficiency, which was then uncertain, would have been supplied by the other Masters, provided they could be continued in their offices upon the old establishment.

It may not be improper to observe farther in this case, That Mr. Dormer's deficiency does not appear to have happened through any extravagance of his own, or by his misapplication of the public money: He employed Mr. Wilson, then a person in good credit, as his banker, and entrusted him with his cash. Wilson had dealings with Poulter in the fatal year 1720. Wilson was reduced, and stopped payment; his debt to Mr. Dormer was then 24,046*l.*; this Mr. Dormer assigns to Mr. Edwards his successor in the office; it was all that Mr. Dormer had, all therefore that he could restore, and more than could be got in: For, Mr. Edwards applying for this money, found Mr. Wilson not able to pay the whole debt, and thereupon a proposal is made of a composition.

The Masters considering this, thought proper to petition the Lord Chancellor, that it might be referred to the senior Master, Mr. Hiecocks, to examine and report, whether it was for the benefit of the persons entitled, that a composition should be accepted.

The Master to whom this question was referred, reports it reasonable; and an order is made, upon a second petition preferred, that the composition should be accepted.

This, my lords, we apprehend, was an engaging in this affair with all the zeal that could be desired on the Earl's part; no evidence of any design or endeavour to conceal the deficiency: All or most of the Masters consulted upon this composition, and consented to it. And as for those that were not parties to it, they are not bound by it.

But it is objected, that this transaction was private and clandestine between the Masters and the then Chancellor; not carried on in the usual manner, nor any notice given to the suitors in reality, though a pretence of uncertain notice mentioned at the bottom of the order.

My lords, we hope this cannot affect the noble lord within the bar; it is the duty of the Chancellor to pronounce orders in Court; but it is the care and duty of the solicitors or clerks in Court to see them drawn up, entered and registered, in proper time and form.

The substance of the order is pronounced by the Court: the form is the act of the Register; and the Chancellor can't have leisure to attend the entries of all his officers.

Fourteen hundred pounds were paid in upon this composition; 1,000*l.* has been brought in since, out of Poulter's effects: so much has been secured at all events by this composition, and the suitors have received the benefit of it. Have the gentlemen on the other side shewn, that without this composition, any thing could have been secured to the creditors in general, or that any other creditor has obtained more advantageous terms? It was said, indeed, that other creditors had received their full demands: but I submit to your lordships, that no proof has been made thereof, only an uncertain hear-say of small sums sent, to give him new credit after his first absconding. But when the composition was made, a good debt was subsisting to Wilson from Poulter, and judgment obtained against him, and he committed to the King's-bench prison in execution. The marshal suffers him to escape; thereupon an action is brought, and judgment obtained against the marshal, for his escape; and at length the marshal is run out of the kingdom, to avoid making a proper satisfaction.

What a series of evil accidents concur to increase this misfortune, and prevent the just design of the Earl to do the suitors all the justice

in his power? But to whom has he been defective, if all prudential steps have been taken? It is hard that he should answer for the consequence, that he could not, it was not in his power to prevent.

But, my lords, in the 15th Article, it is objected to the impeached Earl, That to carry on his unjust purposes, in concealing Dormer's deficiency, in February 1720, he ordered the Masters to bring in their accounts of their cash, effects, and securities; not with a real design to examine the accounts, and secure their effects, but to terrify them into a contribution; and threatened that the cash should be taken out of their hands if they did not comply; by which means he got nine of the said Masters to contribute 500*l.* a piece out of the suitors' money, and then no farther proceedings were had upon their accounts.

My lords, one would have thought that these proceedings, which so plainly tended to the good of the suitors, could not by any artifice have been interpreted to their prejudice.

In February, 1720, the late Lord Chancellor (finding Mr. Dormer's deficiency like to be greater than at first it was apprehended) was willing to look into the state of the accounts of the other Masters, to guard against the like misfortune; and at the same time proposes to them to advance money to help to pay Mr. Dormer's deficiency. Five hundred pounds a piece is raised by nine of them, and applied accordingly; the last of these 500*l.* paid in August, 1721. And upon the 7th of November, 1721, a second letter is written to hasten these accounts, and every argument used that could be thought likely to induce them to it: but the labour proved too difficult, and the pursuit was forced to be given over till a more convenient time and opportunity should present. What was done in this instance also, I beg leave to say likewise, was following the example of another great man, in the method he took in the case of Dr. Eddisbury, and that has some circumstances less favourable than the present: Dr. Eddisbury was always in town, or at least within the reach or power of the Court, and yet his person was not secured for many years after his first failure.

Upon the 29th of January, 7 Annæ, there is an order entered in his case, (the only one we can find on the file) for Dr. Eddisbury to deliver up his effects to the two senior Masters: it recites, That Dr. Eddisbury had several sums and securities for money in his hands, and that several orders had been made for money out of his hands, which were not complied with; and that he declared himself not able to pay; and that his accounts given in were not full: it is therefore ordered, That in four days time after notice, he do account to the several Masters, and deliver in to the said Masters what he hath in hand, and the report to be taken in ten days.

My lords, by this order it appears that Dr. Eddisbury had several orders made upon him for money to be paid, not in average, for some time, and those orders not complied with; and that he had not given full examination, and had prevaricated with the Court; yet the last extremity, the committing his person, and ordering payment in an average, was not thought of, till it was certainly known, and he had actually confessed, that he had not assets to pay the whole.

In the present case, Mr. Dormer was examined, discovered his estate, assigned the whole in trust for the suitors, but died before the enquiry could be perfected.

In Dr. Eddisbury's case the other Masters contributed at first to supply his deficiency, as they since did in the case of Mr. Dormer: and this without doubt was so done, in hopes that his effects, when fully discovered, would in time prove sufficient to answer all, or much the greatest part of the suitors' demands: And thus far both cases are parallel, and orders made for payments to the respective suitors in general, as they applied for them. And no average was directed in the case of Dr. Eddisbury, till it appeared, even by his own confession, that his assets were not sufficient to make good the suitors whole demand: and when the quantum of the deficiency was known, payments were directed by the Court to be made in average. So, in all probability, in due time the like order would have been made in the present case: but that could not possibly be done till the value of Mr. Dormer's effects could be known and ascertained, in order to fix the proportion to be paid, in average. And this, my lords, to this time, through the many accidents before-mentioned, it has not been possible to effect: and therefore, the not directing payments in an average, cannot be reasonably objected to the present impeached lord as criminal: his intention throughout the whole, appears to be calculated for the service and benefit of the suitors of the Court alone, without any prospect or possibility of advantage to himself. His design was to procure every suitor full satisfaction for his demand: and if nothing had happened to interrupt so just a design, it is possible that his great zeal for the public good, and his indefatigable industry might in due time have had their desired effect.

But greater powers have now interposed, and this difficulty being found to exceed the single authority of a Chancellor, may be thought to deserve the greater power, care, and wisdom of the legislature.

My lords, what afterwards happened in the case of Mrs. Chitty, is in part answered, in what has been observed upon the last Article; and, I humbly apprehend, that a plain narrative of that fact, will be a sufficient answer to the objection that has been made in this respect. The earl of Macclesfield having no certain account what cash of Mr. Dormer's remained in his successor Mr. Edwarde's hands, made orders for payment of sums of money from time to time, as application was made in Court; and particularly to pay Mrs. Chitty 1,000*l.* part of 11,000*l.* of her money which had been brought into Court in Mr. Dormer's time. Mrs. Chitty

assigns this to Mr. Lockman, Mr. Lockman applies to Mr. Edwards, the present Master, for payment, and is there disappointed of his money: then he applies to the Lord Chancellor, and represents the pressing necessities they laboured under, that the payment of 1,000*l.* to him at that juncture of time, would be of greater service to him than the whole money could be at any future day: that this sum of money, if immediately advanced, would make his creditors easy; and without it, he must inevitably be thrown into a gaol.

This, my lords, we shall be able to make out in proof (though Mr. Lockman, upon his examination, denied it,) and the late Chancellor, out of pure compassion and charity to this gentleman, and believing his circumstances to be as he represented them, pays him the money out of his own pocket; and, at the same time, or soon after, told him, that he must expect no more from him, but must wait till Mr. Dormer's effects could be got in, or the money could be advanced some other way.

What objection can be reasonably made to this part of the impeached Earl's conduct? To deliver a suitor in distress; to extend a charitable arm to rescue him from the very gates of a prison just opening to receive him; if this be a crime, and to be objected to him by the very person who now enjoys his liberty, as the gift of this noble lord's generous but undeserved bounty, I must not pretend to say that he has many virtues.

On the contrary, I hope it will abundantly appear to your lordships, even from this instance, and from the whole series of this noble lord's conduct, that he firmly believed that all the suitors of the Court would, in due time, be made easy, and their whole demands be made good to them. And had the whole body of the Masters as cheerfully concurred in this good design, and contributed as generously to support the honour of the Court, and themselves, it is more than probable that the suitors would not long have had any just occasion of complaining, nor your lordships the trouble of this prosecution.

It was for this end that the Masters were so often called upon to make a reasonable contribution, and all arguments made use of that would either persuade or terrify them into a compliance, in making the suitors easy, until a proper fund or method could be found out to give them entire satisfaction. Most of the Masters, I think all but one, were convinced that this was a reasonable and just proposal, and expressed a readiness to come into it; and it was for this purpose, that they were bid to consider of the consequences of forfeiting their offices, and of a complaint in parliament.

And for whose benefit were these arguments thus made and pressed upon the Masters? Who could profit by their compliance, or suffer by their refusal? Not the Chancellor himself: he had no other interest to serve, no inclination to gratify, but a just zeal for the public good, and a generous concern for the great loss that was like to happen to the suitors of the court, without his vigorous interposition and assistance.

This, my lords, I humbly hope, appears to be the sole and just principle upon which this noble lord has founded all his designs and actions, to restore the credit of the Court, which had been greatly injured by other men's ill conduct; to procure the suitors in general the best satisfaction that could be obtained; not partially preferring one to another, but endeavouring to do every suitor full and equal justice in order, as their complaints were brought before him.

As to the expressions proved to be made use of by the impeached Earl, in the case of Harper, surely they can have little weight.

Can it be imagined, that after so many transactions had happened in the Court of Chancery, in relation to Mr. Dormer's misfortunes, and the great losses that were like to happen to the suitors thereby, the then Chancellor himself should be the only person that had never heard of it; and even after such time as he had been endeavouring to find out means to remedy so great an evil? Could any man of less sagacity than he must be allowed to have, conceive that he could be credited, even in the Court wherein he presided, in saying (as it is now represented), that he was a perfect stranger to the affair of Mr. Dormer; that he had heard nothing of it, but as idle news, a flying report, that might be true or false? No, my lords, that certainly could not be his intention, in speaking the words that are said to be uttered by him on this occasion.

But when a purchaser, under the decree of the Court, that had paid his money in to the Master, and required his conveyances to be executed, could not procure the parties interested to execute, without actual payment of the purchase-money to them at the time of the execution, and that money was sunk in Mr. Dormer's hands; this first brought the deficiency of Mr. Dormer in judgment before his lordship; and it was the first time it came regularly before him in judgment. Upon this he declared, That then it was a proper time for him to make a strict enquiry into this matter: he could not properly enter upon this enquiry, upon the uncertain reports of persons about the town, or upon any private conversation or information that he might have received, and possibly might have the expression of common talkers of news; but now, that it came judicially before him, he would thoroughly examine into the whole matter, and endeavour to apply a proper remedy.

This, my lords, we shall prove to be the occasion and manner of the speaking these words, by persons that were then present in Court; and this happened but in December last was twelve-month; and accordingly it was ordered to be put under the immediate examination of Mr. Edwards, who succeeded Mr. Dormer in the office, and who must therefore be admitted to be the most proper person to perfect that enquiry, and also because he was the most concerned in the consequences of it: but time

might appeal to the great rewards his majesty has bestowed upon him: those very graces which have been exaggerated against him, are the noblest testimony in his favour. His majesty thought him worthy of the great seal, because he had found him faithful in his other trusts. His majesty approved him, because his subjects had: it was for their sakes (the constant motive of his choice) that he appointed him Lord Chancellor.

This once was the Earl's character; this once his merit. These were, nay, are still our obligations to him. My lords, experienced worth has a right to greater confidence and credit: this is a rule of evidence, and of common justice; and unless the most convincing proofs are offered, your lordships never can believe, that one who has done so greatly well, can do so basely as is suggested by the Charge.

But supposing, upon so very strict an enquiry into the conduct of any great man, something amiss was found (for the greatest are but men, and must have failings), yet is former merit not quite to be forgot. Public services are thought just reasons for remission of the highest past offences, though done perhaps merely with a view of obtaining it: and shall those done upon a more generous principle, arising from an honest, disinterested heart, deserve a less regard?

But, my lords, that I may have the better opportunity of observing on the evidence brought for the Commons, as well as on the arguments offered, I shall beg leave to follow the learned Managers in the method they took themselves.

The foundation of their Charge is, the disposing of several offices for considerable sums of money. This is the corruption! This the extortion! And, to aggravate the guilt of this, and raise your lordships' indignation, the preamble sets forth, "That in or about May 1718, the Earl was appointed Lord Chancellor of Great Britain, and did thereupon take the usual oath for the due execution of that high office, and such other oaths as have been accustomed." And the subsequent Articles proceed to charge his lordship with breach and violation of his oath as Lord Chancellor. The learned gentlemen who had the conduct of the evidence, justly sensible of the expectation they had raised by this aggravation, did attempt a proof.

The Earl, in his Answer, had set forth at large, the oath he took as Lord Chancellor, when first appointed; and had insisted, that he took no other oath of office. Was this the oath the Earl had thus broke and violated? No, it was not this; but one which, by the Articles, he is no where charged with ever having taken. Upon the choice of sheriffs, it seems, the 12th of Ric. 2, is annually, in Old French, read over by the clerk; and all present at the council kiss the Bible. It is this transaction with which they would affect the Earl. But, my lords, it is notorious, that the statute is so far grown obsolete, that in no other instance, besides this of sheriffs, is it at present taken notice of. And as the oath upon this occasion must be absolutely confined to the choice of them; so is it evident, that the statute itself never did, nor was intended to reach officers of the nature with these in question; as I shall farther observe. And, indeed, with the oath directed, the statute is so extremely rigid, that I must own, for my part, I do not see any service it can do society in its full extent. It may, perhaps, afford some protection to a first minister in laying him under the obligation of an oath, to put none into any office who shall pursue or solicit by himself or by other.

However, I cannot help thinking that the learned Manager had but very small pretence for the reflection he was pleased to make, in saying, That the Earl seemed to have forgot this oath not only in his Answers, but in his conduct; when it appears that he himself had forgot how he had charged it in his Articles. If he will cast his eye back upon them, he will find that the preamble makes mention of no oaths, but what were taken by the Earl upon his majesty's appointment of him to the seal; and the Articles charge him only with violation of his oath, as Lord Chancellor.

Having justified the Earl's memory in this point, I proceed to justify his conduct in others; and I hope the defence he has made by his Answer will have its weight with your lordships. The Earl has insisted, "That the making presents has been long used and practised in the time of his predecessors; that such presents have been reckoned amongst the ancient and known perquisites of the great seal; that the making and accepting them has been notorious to all the world, and never before looked upon as criminal, or complained of as such." My lords, this (as far as proof is requisite) we shall make fully appear by great numbers of witnesses, who are able to speak to both the opinion and practice of the Earl's predecessors. To this it has indeed been said, that the Earl may be guilty, though his predecessors have escaped uncensured or unpunished. My lords, the examples we have followed are too worthy to lead us into guilt: but, my lords, if the Earl has only done what they have done, and received what they esteemed an honest perquisite; was the practice in itself not quite so regular at first, yet, 'Sunt tolerabilia, quæ consuetudo comprobat.' —Usage (if ancient) has so great authority, that it makes the common law of England; and though with us it cannot repeal a statute, or destroy its force, which it does in other countries, yet, my lords, there is an equity to be observed; and reason as well as humanity must inform your lordships, that no man ought to be treated with the utmost severity which an old statute may direct; when great examples may have led him to the action, and a long connivance of his predecessors promised him security from censure.

But the Earl's defence stops not here; he

says, "He humbly hopes that the giving or receiving presents on such occasions is not criminal in itself, or by the common law; and that there is not any act of parliament whatsoever, by which the same is made criminal, or subject to any punishment." To this the learned gentlemen have given but very general answers. Some have by rhetoric, instead of reason, endeavoured to persuade your lordships, that the act itself is highly sinful, and that the corruption in selling offices is greater and far more dangerous to society than even selling justice itself: others have talked of common law, and statutes, but have produced none, except those of 12th of Rich. 2, and 5 and 6 of Edw. 6, and a few inferences drawn from them, which I shall speak more largely to immediately: and as the learning and experience of those gentlemen are too great for any law to escape their observation, so is their honour to reserve any for their reply, I shall take it for granted, that since no other has been mentioned, there is no other.

My lords, the writers upon the law of nature have properly distinguished between selling justice, and offices concerning the administration of justice: and not as the learned Managers have done. With them the selling justice is absolutely forbid, is absolutely corrupt and immoral. The selling offices is matter of mere policy, varied in different governments, prohibited in some, allowed in others.

Among the Romans the law in this particular fluctuated and changed, and though the sale of offices was generally forbid, yet it received great alterations, as the emperors or the people were disposed: when elections of the magistrates were popular, the suffragia, or votes of the people, were bought and sold; but as this practice produced frequent riots and disorders, frequent laws were made to restrain it, which are still extant, and part of the body of the civil law: however, all proving unsuccessful, the emperors took occasion from it to usurp upon the people, and name the magistrates themselves: this translation of authority carried the benefit to courtiers, and other men of power, who took a sort of brokage for their interest. Theodosius the emperor, so far gave countenance to this practice, that he even allowed an action for the recovery of what was promised for procurement of any place. In process of time the emperors themselves participated and took a share of this advantage, which introduced a distinction of "Suffragium Dominicum, and privatum." "Suffragium privatum, quod Aulicis dabatur;" and "Dominicum, quod Imperialibus rationibus inferebatur." This distinction, as well as the practice, is very evident from the two novels of Justinian, which were intended absolutely to prevent for the future all sale of offices. In Novel 161, it is said, "Ejusmodi Dominica suffragia magnum reddebant pecuniarum cumulum;" and in Novel 8, that by the prohibition, "Quæstus immodicus imminuitur imperio."

It is well known that in France, the laws have varied in like manner. Sometimes the sale of offices was permitted, sometimes forbid; but at present, and for this last century, it has been so far encouraged, that officers retain the right of resignation even in succession, and transmit it to their heirs, in case they have paid the annual tax or duty within the year.

I mention this to shew what the opinion has been of other governments; that they have not esteemed this practice so highly criminal, or unreasonable; and as they have not, so neither have we: for notwithstanding what has been urged with so much ingenuity; (according to my poor apprehension) that very statute of Edw. 6, so much insisted on, is the strongest proof which can be given, not only that in particular instances the sale of offices is now permitted, but that it was in general before that statute, by the common law of England. This statute in sect. 3d, enacts, that "all bargains, sales, promises, &c. shall be void." And yet by the sect. 6, it makes provision, that "it shall not extend to any bargain, sale, gift, grant, &c. concluded and agreed before the 1st day of March next coming, but that the same bargain and sale so concluded and agreed, shall always remain, continue, and be in such force, strength, and effect, as if this act had never been had or made." If bargains and sales, agreed before the 1st of March, are to continue in such force, &c. as if this act had never been made, the consequence to me seems certain, that those bargains and sales had force, and that they were before effectual and legal; for otherwise the provision would be absurd and ridiculous.

The 7th section of this statute still goes further, and makes a perpetual provision, that "This act, or any thing therein contained, shall not in any wise extend, or be prejudicial or hurtful to any of the chief justices of the king's courts, commonly called the King's-bench or Common Pleas, or to any of the justices of the assize that now be, or hereafter shall be; but that they, and every of them, may do in every behalf, touching or concerning any office, or offices to be given or granted by them, as they, or any of them, might have done before the making of this act."

If this statute be explanatory of what the common law was before, and as such it was insisted on, it is certainly impossible to doubt, but that by the common law the sale of offices was allowed: "The chief justices, &c. may (touching their offices) do as they might have done before:" this act is to prevent the sale of offices, and yet not of their offices; they had been used to bargain, and sell them, and still may do it, for this act is not to be in any wise prejudicial, or hurtful, to any of them. This is the plain sense, this the very language of the provision.

But I humbly conceive that this provision is not only an evidence of what the common law itself was, but that the act of Rich. 2, (of which I before made mention) could never be intended to reach offices of this nature; for as

the act of Rich. 2, directs an oath, which the chief justices, &c. are expressly required to take, can it be imagined, without the greatest extravagance of fancy, that the legislature should be so very forgetful, as to guard and secure to them a privilege which they could never exercise without the highest perjury?

This, my lords, is the only statute, which, as I apprehend, any way concerns the Charge brought against the noble Earl: but does this statute make the sale of offices criminal? Does it direct a punishment, or even by any general clause forbid the practice of it? It is true the bargains are hereby made void, the person who sells, does lose his right of nomination, and he who gives or pays, is to be adjudged disable in law to have the office. My lords, these are the discouragements which the legislature then thought proper to lay such bargains under, these the only penalties; if the Earl has by his conduct done what this statute disapproves; if he has bargained and sold offices, which your lordships judge within the statute, and the constant usage of his predecessors will not give protection, the statute points out your lordships' justice. But, my lords, this unfortunate great man, we think, has already more than satisfied this law; he has resigned the seal, and yet stands impeached before your lordships.

Offences are to be judged of by the penalties and punishments the legislature has annexed: for in determining the penalties, it determined the sense it had of the offence: when penal laws are made, it must always be supposed, that a consideration was had of the malignity of the act forbid, and of its influence on society, and that the punishment directed was esteemed adequate and just: by this rate it is easy to guess what the legislature thought of the offence of selling offices. And, indeed, it would have been (if I may use the expression) unbecoming the legislature to have inflicted severer penalties, while by the same law it permitted the first judges in the nation to do what it seemed to condemn in others.

When a law is once past, the transgressor of it is subject only to what that law directs; to inflict a greater punishment, would be deserting law, and acting arbitrarily. This observation will hold in every instance, in matters of common justice, as well as public policy: to forbid to rob, or murder, is only to enforce what was always law; to forbid to sell offices, is to lay a political restraint on acts indifferent. And yet in the former case, to punish the offender beyond the law, would be unjust and arbitrary. Are prohibitions merely political more sacred? Or is a trespass against them more severely to be treated, than one against the law of nature, the law of God? No; your lordships (I say it with submission) are the supreme judges of the nation; as such, the supreme judges of the law; for by the laws your lordships always judge: it is the peculiar blessing of our nation, to have certain known laws to be the guide of our actions, and the measure of our punishments; to secure to us this blessing has been the labour and the glory of our ancestors. For the sake of this, the Revolution is beloved; and for a steady adherence to this sacred rule, his majesty is esteemed the joy, the safety, the liberty of his people.

I beg pardon for dwelling so long upon this subject; but the honourable gentlemen of the House of Commons having made the sale of offices the foundation of their whole Charge, I thought it of some consequence to prove to your lordships, that it is no ways criminal in itself: and, my lords, if it be not criminal, where is the corruption? Where the extortion? Is it in the manner of receiving presents? How that was, the learned serjeant of counsel with me has already given your lordships an account; an account which, we hope, does sufficiently justify the Earl against the imputation of haggling, or of screwing up the candidates to what they gave. But as these several Articles will be more fully spoke to when we come to produce our evidence, I shall pass them over with an observation or two. If the Earl had so great a thirst for gain, and was so resolutely bent to amass such excessive sums of money, it is to me very strange, that whenever his opportunity offered, and he had the free and full disposal of an office upon a vacancy by death, he should always receive a much less sum, than what, from the very face of the Articles themselves, appears constantly to have been paid by Master to Master. Had the Earl put the office up to auction, or even insisted on a price, is it probable that he should not be able to obtain one as great?

However, as I pass, I cannot help taking notice of the circumstance with which the Article of Mr. Thurston's admission is introduced, "That Borret died insolvent, greatly indebted to the suitors, and the said Earl did, without securing a just satisfaction, admit him." Your lordships must have observed, that the Earl is not so much as charged here with a knowledge of this insolvency; and, my lords, knowledge only can create the guilt. If the Earl did not know it, can your lordships censure him? If it be asked, why he did not? Mr. Godfrey, who was produced and examined by the Managers, has already give a full answer: Mr. Godfrey was most intimate with the affairs of Borret, and as such was directed by the Earl to inspect them; he has deposed, That he told the Earl, he thought there would be no deficiency in his office; this (your lordships may remember) he said was his own sincere opinion, and he gave good reasons for it. Mr. Borret had a very good income, reputed 400*l.* per ann. besides his place; he had lately married a wife of fortune; his family lived with his father-in-law; and he himself a man of no expence: My lords, Mr. Godfrey told you, he was so fully in this opinion, that when Mr. Green, the deceased's uncle, made a demand of a debt, he was greatly surprised, not imagining that he had owed one single farthing. Whence this deficiency (if there is any) arose

can tell: but, my lords, that fatal year of 1720, is not so long past; as to leave us quite without conjecture; a year, my lords, when the contagion was so virulent, that scarce any virtue was left uninfected; and those who sunk under it, remarkably deserve our pity, as sad instances of human frailty: to this year the Masters owe their whole distress, and to them the Earl, though innocent, this aggravated Charge: but, my lords, supposing a deficiency in this office, and known too by the Earl himself, what satisfaction to the suitors was from him expected? What could he possibly secure? There is but one method: which, I hope, he will not, by the Managers, be thought criminal in not taking, since it is that, which they themselves condemn as illegal and corrupt.

It may be expected that I should shew some regard to the 9th Article: but as it is that which the learned gentleman made choice of to begin with, I apprehend greater difficulties than I see; and therefore shall leave the consideration of it to those, who are much more able to surmount them than myself: but I must ask pardon, that I cannot reach a distinction on which great stress has been laid: It has been observed by more than one, that, in this case, the money was paid for the resignation, and not for the admission. Is there any real difference, whether the buyer or the seller pays the compliment? Must it not be supposed that it was considered in the bargain, and part of it? Or is it imagined that a greater hardship was in this case done Mr. Thomas Bennet, by a seeming obstruction of his inclination to part with an office, when in fact the Earl could not hinder his resigning it? For notwithstanding the observation made by a learned gentleman, that the Lord Chancellor was the king's officer, and therefore a resignation to the crown was the same as to him; yet am I from his very great abilities persuaded to believe, that he is not so entirely a stranger to the thought of that high office, as not to be able to distinguish the crown from the seal, and to know that in many instances of patronage they are different: the Lord Chancellor being the king's officer, a resignation to him may in some cases be equivalent in law to one made to the crown itself, but never *è contrario*. As to this particular office, and indeed to many others of the like nature, we shall make it fully appear, that though the officer himself is in the nomination of the crown, yet has he always been under the recommendation of the seal, and has as constantly paid acknowledgment to the Lord Chancellor.

Upon these charges are built the whole of the following Articles: every expression, every action which could bear an ambiguity, has been collected to form a crime. The Earl has received money for his offices, his aim is therefore gain by sale of offices, an easy inference; and whatever is after said or done, or *vice versa*, is at first suspicion, and then an evidence against him.

But, my lords, before I proceed to try particulars upon this head, I must beg your lordships' patience to compute in general the very small advantage the noble Earl could propose by the scheme the learned gentlemen have projected for him: the office of Lord Chancellor is precarious, and only during pleasure: the king, for his subjects' welfare, is jealous of every minister, and ready to remove the greatest favourite upon the very first offence; and upon this contingency, what would the chance of disposing of a Master's place be worth? A very trifle; I may boldly say, not so much as what he has refused the opportunity of gaining upon every complete vacancy he has disposed of. And can your lordships suspect a character once so dear, once allowed so worthy, of doing such little things, I should say, such base things, for no advantage, and yet to promote this illegal and corrupt gain on which his heart was eagerly set? The noble Earl is farther charged "with having admitted several persons to the offices of Masters, who were at the time of small substance and ability." Against this there lay an obvious objection; why persons of small substance? When the Earl might have, and indeed always had, when of his own choice, others of sufficiency. Wherefore, to make their Charge consistent, a fraudulent method is supposed to be introduced, of paying for their places out of the effects of the Court; a method best suited to such persons: but your lordships' justice must have led you to observe, that they no where so much as insinuate, that the Earl knew them to have been as charged: they were sensible of the proper caution he had taken, and (as it will appear in evidence) that not only previous enquiries were always made, and none admitted, who came not well recommended, or personally known to the Earl himself; but that when several candidates have offered, his lordship has been so unmindful of the little views he is supposed ever to have acted with, that he has constantly preferred him he thought the worthiest, though the present to the Earl was far less than what others gave him expectation of. This surely, my lords, will be enough to vindicate his care; and though it should appear, that he was deceived in any single instance; nay, though the man himself should be the evidence of his own deceit and fraud, yet I hope, my lords, such person will have his full compliment of credit, if he is believed in the character he gives of himself. But to make some excuse for the Earl's good opinion of this Mr. Thomas Bennet, and his circumstances, I must observe, that it is evident from his own account which lies upon the table, that when he was admitted, he had an estate of between 5 and 600*l.* per ann. he had besides an office for life of 250*l.* per ann, he kept his coach, and then lived in reputation. However, I must confess, that in farther proof of his great integrity, this gentleman has deposed, that part of his estate was then mortgaged for more than it was worth. I should, upon this occasion, put your lordships

in mind of what happened upon this gentleman's confrontation, because he has been singular in his evidence on more facts than one; but we shall take another opportunity of displaying this worthy person's veracity, that your lordships may know how much regard to pay to him, by seeing how little regard he has for truth.

As to the schedules, the neglect of which is made so criminal, it would be enough to say, that the taking them could not prevent the fraud complained of; for what would be the difference in deducting the sum agreed on for the purchase upon the transfer, or repaying it the minute after? And if the new Master is really able and sufficient, where is the injustice done in either case? But we submit whether such schedules must not be made between Master and Master: For without them their accounts cannot be settled; and as it is for the interest of him who succeeds, so is it for the security of the other who resigns. But supposing the practice to have been as charged, and their transfers were not complete, the only consequence I see is, that both Masters are bound, and the suitors have by it a double security. It has happened so in the cases of both Mr. Hiccocks and Mr. Rogers; they imprudently retaining the effects of the Court, for the sale of their offices, have thought it proper to petition the lords commissioners to repay the money: So that some good fortune has attended this practice, ill as it is; the suitors have by it got so much money more, than what otherwise they would have had.

My lords, when Dormer's affair (though sufficiently unfortunate) is considered by your lordships, I hope that the noble Earl will not be thought to have acted otherwise than as became his character: Upon the first notice of the misfortune, the Earl took all possible care both to save the effects, and secure the office; he sent the two senior Masters to search his chambers, and to stop the transfers of all stock which stood in his name in any of the public companies. My lords, had the Earl had that eye on gain, had he had that apprehension of discovery which is represented, he would scarce have taken this last step, which must and did make a suspicion of the office public: When Mr. Dormer was returned, and upon such terms as the Managers themselves can't say were unreasonable to grant to one, whose person was out of reach, and whose effects and accounts were in the greatest confusion; His liberty was all he asked, and that upon condition only of a full discovery and a fair assignment of all he had; I say, my lords, when Mr. Dormer was returned upon these terms, which we hope he has honestly performed, his office was sold, and every thing done, not to conceal, but to supply the deficiencies. I would not enter too minutely into the composition with Mr. Wilson: It will, I conceive, be a full and satisfactory answer to the Charge, to observe, that as the suitors were not parties to it, they can no ways be injured by it. If the composition be precarious, trifling, and unjust, the suitors are still at liberty to proceed: If more could be had, they still may have more; but till more is recovered, it must be admitted that the little, which is gained, is owing to the composition. Had the suitors been parties, the order so much complained of for its irregularity would not have been made without a notice; but as Mr. Wilson, whose particular interest it was to have them parties, did not desire it, we apprehend the order to be in the usual manner. My lords, the Masters (as is in evidence) having in some measure engaged themselves to make good the deficiencies, if any should happen, the Earl could have no reason to doubt the justice of the proposal of Mr. Wilson, after Mr. Hiccocks had reported it, and Mr. Edwards, the successor in the office, had prayed the Earl to order him to accept it.

It seems, my lords, a very forced and unkind construction, which the Articles put upon the accounts his lordship had required of the Masters; but the worthiest behaviour may be thus misconstrued. The Masters themselves had made the proposal of contributing, and it will appear that they all (except Mr. Lightbourn) did pay their money voluntarily. What occasion then for such methods as are suggested to terrify and oblige them to this contribution? Is it in proof that the requiring the accounts did influence one single Master? No, my lords; but on the contrary, you will find that the payment by the Masters did not prevail on his lordship to desist; for it will be in evidence that the Earl still persevered, and that by the Earl's direction a letter was wrote to the Masters, after the several payments were made, complaining of their delay, and requiring their accounts. The Earl, indeed, upon representations, did afterwards think the method impracticable, which he is the better justified in saying, because the very same method has been since found so by the honourable committee for inspecting their accounts, and departed from as such.

Upon this subject of Dormer's deficiency, I must beg leave to remind you of what Mr. Edwards told your lordships. He said, "that they were all of opinion, that the deficiency would be made up; and unless he had believed it, he would not have entered into the office." If Mr. Edwards, who was so much concerned, was in this persuasion, why might not the Earl too with innocence? And, my lords, this persuasion, this expectation, is, I humbly conceive, a very satisfactory reason why the Earl, had he been obliged to have declared an average *ex officio*, in common cases, might be excused the doing it in this.

As to the cases of Chitty and Harper, when the circumstances which attend them are laid before your lordships, the inferences drawn from each will appear equally unreasonable: For the Earl can no more be supposed to have intended a concealment of Dormer's deficiencies by the order he made, after he had expressly mentioned in open court the several accidents by which they had happened, than he

could by the payment of 1,000*l.* to Mr. Lockman, when he told him, "That it would be the last payment Mrs. Chitty was likely to receive, the residue being in great danger from Dormer's deficiency." But when we prove to you the very great distress Mr. Lockman represented himself to be in, your lordships will be convinced that the money was by the Earl advanced from no other motive, than a generous and compassionate regard to him: This at that time was Mr. Lockman's own sense of it; this he has often since acknowledged, though upon his examination he was pleased to claim it as his right, and own no obligation.

I think it will be (I should say, it is already) very full in proof, that the Earl desired a thorough reformation of his Court; and though difficulties have obstructed it, yet surely, my lords, it cannot be imputed to any omission of his in the light the charge would place it. There were difficulties, not only with regard to the Masters and their accounts, but to their jurisdiction and privileges. Difficulties of such a nature, that one of the witnesses thought they required the greatest resolution to surmount them. If the noble Earl had not a resolution quite sufficient, it might perhaps be his misfortune, but surely not his fault. But what proposals of security the Masters could possibly make, which they esteemed useful or convenient to themselves, and the Earl should refuse, I cannot conceive. I imagined from the scheme on which the Charge is founded, that their interest had been the same, had been one, and what served their purpose must have served the Earl's; and yet now we are told the contrary.

How the learned gentlemen have made out the several deficiencies, must be considered when we are upon their evidence to that Article: I will only observe, that no permission or encouragement of the Earl's has been proved, by which they are increased; that no money has been compelled into court, by any order he has ever made, to advance their offices, nor any countenance given by him to any one ill practice.

How far the Earl is guilty of obstructing the enquiry his majesty had directed, or how far he was instrumental in deceiving the council-board, we submit upon their own evidence: it appears, that at the meeting at Mr. Edwards's house, all of them declared they were able to answer their several balances; and when the subscriptions were signed, they were believed to be as they had declared themselves: if they were, where was the fraud in the proposal to assist each other? Or how could it be understood to make a false appearance, with propriety of language, or common justice? But it is remarkable, that this advice, however fair and honest, was not given by the Earl, but by Mr. Cottingham, and without his privity or knowledge, and occasionally in conversation with the Masters: and as to the subscription which they added; did the Earl use any arguments to persuade them to it? Did he press them, or even desire them to sign it? No, they themselves confess, that he but barely recommended it, as being what their senior Master had made, and better in form than some others, which were then produced. He used no arguments, he pressed them not; and they, honest men (as they themselves have deposed before your lordships,) made no scruple or objection to it. I beg pardon: I should do justice to Mr. Thomas Bennet, who I think had his scruple to the word "demonstration." So that if false representations have been made, they who have made them are the guilty; they, and not the Earl, have deceived the council-board; the action was their own, free and unsolicited.

But, my lords, not to detain your lordships longer; one of the learned Managers seemed sensible of the force of one evidence we have to offer in vindication of the Earl from the charge of avarice; and therefore, without denying a public fact, he was pleased by his eloquence to try, whether he could not bring charity itself under suspicion: whether he could not confound the difference between the most worthy generosity, and the luxury and debauchery, and the riots of a Catiline? What innocence is secure against the power of such eloquence? My lords, had he not thought this a defence against the very foundation of the whole Charge, he would not have surprised us with such an answer: he well knew that the Earl could have orphans and widows, the poorer clergy, and the youth of the University, to appear and acknowledge their obligations to him: obligations made greater by being unasked; I cannot say unexpected, because every object in distress within his knowledge had reason to expect relief. I would ask the learned gentleman, whether expences of this kind were part of Catiline's profuseness?

This, my lords, will be an answer to their oft-repeated imputations, and must clear the Earl from all suspicion of ever having acted from such sordid motives, or from any thirst or impotence of gain. Is it likely that he should encourage the highest villainy to raise a sum, and then apply it to relieve the poor and the distrest? Is it credible, at the same time, that virtue and baseness should thus jointly govern him? Hard, indeed, is the condition of the Earl, when his very virtues, when his most commendable actions, are turned to his disgrace and injury! But, under all, it is a great satisfaction to him, that your lordships are his judges; and he submits his whole conduct to your justice.

Com. Serj. (Mr. Lingard.) My lords, the gentlemen that have gone before me upon this occasion, have so fully opened the nature of the noble Earl's defence in general, that I shall not presume to take up any more of your lordships' time, by following them in that method; but shall confine myself to the Fifth, Sixth, Seventh, Eighth, and Ninth Articles; and shall beg leave to inform your lordships what we have to lay before you, in relation to the matters contained in those Articles. But before I

proceed, I shall beg your lordships' permission to go out of these Articles, so far as shortly to observe, that in the preamble to the Articles of Impeachment, where the several favours and advantages, which the noble Earl at the bar received from the crown, are enumerated, those which were the peculiar marks of his majesty's royal bounty to him, and those which were the ordinary benefits and allowances, which the Earl enjoyed in common with his predecessors in that office, are so blended together, and set in such a light, that at least it gives an occasion to mistake some of the latter sort for those of the former; if it does not amount to an insinuation to that purpose, in order to enhance the particular advantages which the noble Earl has received, above what they really were.

My lords, I should be injurious to that noble lord, who is possessed with sentiments of the deepest gratitude to his majesty, should I endeavour to lessen the instances of his royal munificence towards him: and I purposely omit mentioning any thing of the noble Earl's merit upon this occasion (though I humbly apprehend that I should be thought very excusable in so doing,) because I am sensible, that he chuses to owe every thing purely to his majesty's goodness: yet as he has (very properly as we humbly apprehend) in his Answer, set one of these matters in its true light; by informing your lordships that the annual allowance of 4,000*l.* per annum, mentioned in the preamble to the Articles, and which he admits to have been granted to him, during the time he should continue Lord Chancellor, is no way particular in his case; but that the same has, for many years past, been constantly granted to, and enjoyed by his predecessors; give me leave, my lords, for a proof of what is so insisted on, to refer your lordships to what appears upon your own Journal, in the case of the lord Somers, upon the Impeachment exhibited against him by the House of Commons, for High Crimes and Misdemeanors; where, in the introduction of the Charge in the Eighth Article, this appointment of 4,000*l.* per annum to him is alleged in aggravation of that Charge against him. His lordship by his Answer thereto, admits, that during his custody of the great seal, he did receive the profits and perquisites thereto belonging, which before his time were become very inconsiderable; and that he did also receive an annual allowance from his then majesty of 4,000*l.* per annum, being the like pension that had been allowed to several of his predecessors. This, we humbly apprehend, plainly shews both that this allowance has been usual, and likewise the reason of making such allowance; which is the inconsiderableness of the ordinary profits and perquisites belonging to that high station.

I shall now proceed to the Articles I proposed to speak to; in which the matter, which is charged as criminal upon the Earl, is, That he did illegally, corruptly and extorsively, insist upon, take and receive, the several sums of money therein respectively mentioned, for the admitting the several persons named in the Fifth, Sixth, Seventh, and Eighth Articles, to be Masters of the Court of Chancery; with a small variation in the Eighth Article, by way of aggravation, that there was a deficiency in that office, which is there taken notice of; and for permitting Thomas Bennet, as it is alleged in the Ninth Article, to resign his office of Clerk of the Custodies; which is agreed to be a charge much of the same nature with that in the four preceding Articles; and is alleged to be against the good and wholesome laws and statutes of this realm.

It has been strongly insisted on, by the gentlemen appointed to manage this prosecution, that this is a matter which is *malum in se*, and consequently a crime at common law, as well as expressly against the statute of 12 Richard 2, and 6th of Edward 6, and no means, that could be thought of, have been wanting to represent it under all the most aggravating circumstances, and in the most odious and frightful appearance, that the blackest colours could give it.

My lords, the Earl, by his Answer, denies that he did at any time insist upon the sum of 105*l.* or any other sum of money, to permit or accept of the resignation of Thomas Bennet, mentioned in the Ninth Article; or did refuse to permit or accept thereof, until the said Thomas Bennet had agreed to pay the same, or any other sum of money on that account: which is a denial of that, which is properly the Charge in that Article: he does indeed admit, that he did receive a present from Thomas Bennet, under the circumstances mentioned in the Answer to that Article; and likewise that he accepted the presents, which were freely and voluntarily sent to him, by the several persons mentioned in the four preceding Articles; in two of which instances all, and in the other two, great part of what he so received, has been returned. But his lordship very rightly (as we humbly apprehend,) insists upon it in general, that the acceptance of presents upon such occasions has been long used and practised by his predecessors; and that they have been reckoned as the ancient and known perquisites of the said office: that it is not criminal in itself, or by the common law, or against any statute of this realm; or subject to any judgment, which can be prayed in this prosecution.

The gentlemen of the House of Commons, my lords, in order to support what they have insisted upon, and to make it appear that such an acceptance of presents is criminal, have caused the statute of 12 Richard 2, to be read to your lordships; and have produced Mr. Ayres, to give an account of the ceremony, which is annually practised upon the occasion of nominating of sheriffs.

I won't presume to act the casuist, or trouble your lordships with any niceties, by questioning, whether what passes upon that occasion ought to be esteemed an oath or no; but, my lords, I hope I may venture to say, that it is very plain, it is no oath of office in general, for

this reason, because, if it had been so, the once taking it had been sufficient; and there would have been no occasion of repeating it annually, in the slight cursory manner Mr. Ayres has given an account of, upon one particular occasion; which likewise shews, that what is then done, is confined to that matter only which is then transacting, and not intended to be generally obligatory in other things.

If the accepting of presents, upon occasion of recommending, or admitting officers to places, had been understood to be criminal in the eye of the common law, or against the statute of 12 Richard 2, no doubt, but in so great a length of time, precedents might have been produced, where persons had been censured, or punished, for a practice which has been represented to your lordships as the most vile and pernicious sort of bribery and corruption; and yet, notwithstanding the many marks of the severity of the government against bribery and corruption, which have been taken notice of, the gentlemen of the House of Commons have been pleased to acknowledge, that there is no precedent, no judgment to establish and warrant what they assert to be law in this point.

My lords, I beg leave to say, that a stronger argument than this, can hardly be thought of, to prove that this behaviour is not illegal; it is a method of reasoning in our law, and, I conceive, consonant to the general reason of mankind; that where a thing never has been done, it is to be supposed there is no ground or foundation for the doing it. Nor can this way of reasoning be avoided, but by supposing that there never have been any instances of this nature before, or those so rare, and private, that the government had no opportunity of taking notice of them: a supposition, my lords, so extraordinary, that there is hardly room to admit of it: and therefore, when we shall, with your lordships' permission, lay before you instances of this thing having been frequently and openly done, it will not be so much in order to prove the contrary of such a supposition, as to give an opportunity to your lordships, and to intreat you to reflect on the great abilities, and unquestionable integrity of those excellent persons who have acted in the same manner: the notoriety and openness with which this has been transacted, and the perfect silence of the grand inquisitors of the nation, and the whole legislature in regard thereto: and then to consider the clearness and force of such a comment upon the law, both from the actions of those, whose characters will not allow of a suspicion, that they would act contrary to what they apprehended to be the law: and from the silence of those, who should and would, no doubt of it, have taken severe notice of it, if it had been thought to have been so.

But suppose, after all that has been said, that this was still a doubtful point, would it not, my lords, be extremely hard to rouse up an old antiquated law, which for so many centuries has quietly slept, without exerting itself, without fixing any mark, or leaving any traces of its force and vigour, to point out the danger attending such a practice; a practice that has been owned and countenanced by such great and unexceptionable men, and objected to by none; and which from thence might well receive the appearance of being fair and innocent: would it not, I say, my lords, be very hard, without some previous notice of the danger, to put this law in execution, to unsheath this rusty sword to wound this noble earl with? We hope your lordships would think so, if it were capable of hurting him, which we humbly apprehend it is not; and that, if there is any doubt remaining with your lordships, as to the legality of the Earl's behaviour in this point, that the statute of 6th of Edw. 6, will clear it up beyond question; and that it will manifestly appear by that statute, that accepting of presents is neither *malum in se* against the common law, or the statute of Rich. 2, and that this statute of Edw. 6, must be looked upon as a declarative law in those points, or otherwise it must be allowed (which none sure will suppose) that the legislature of this kingdom has made a provision to sanctify a moral evil; (for that is the import of *malum in se*) to allow, permit, and even encourage, contrary to the statute and common law, a practice not only immoral and vile, but of the most pernicious tendency and consequence, if the representation made of it by the gentlemen of the House of Commons is to be regarded.

My lords, I shall pass by the fourth paragraph of that statute, whereby it is provided, that the said act should not extend to offices of inheritance; though, I presume, the largeness of the estate can hardly be thought to alter the moral nature of the action. By the 6th paragraph, there is a saving for all bargains, sales, promises and agreements of or for any office made before the first of March; and such bargains, sales, and contracts, are exempted out of the force of that act. Your lordships will be pleased to observe, this session of parliament began the 23d of January; so that this saving clause makes a provision for futurity. My lords, this would be to establish iniquity by a law, if the accepting a present on occasion of admitting a person into an office, was immoral and criminal, as has been asserted. But if it were so, and likewise against the statute of 12 Rich. 2, and contrary to the supposed oath, taken in pursuance of that statute; what, my lords, must be thought of the last paragraph, which provides, that the act should not extend to the chief justices, or justices of assize, that then were, or thereafter should be? These all annually take the same oath (if it is to pass as such) upon the same occasion of nominating of sheriffs, as Mr. Ayres has informed your lordships; and are consequently, by virtue thereof, under the same obligation, in this respect, as a Lord Chancellor: and can your lordships suppose that so many reverend and learned persons, who, from their known duty of attendance, must be presumed to be present in your lordships'

House, whilst this law was there under consideration, would have forborne informing their then lordships, how contradictory those parts of this statute were to the common law, and the statutes of this realm, especially that of Richard 2. Can it possibly be conceived, that the whole legislature would pass a law, not only to allow, in several instances, the practice of what was so contrary to the law of reason, as well as the common and statute law; but even to give a licence, and encouragement to break an oath prescribed by statute, and annually repeated; and that nobody should ever scruple the doing so, or discover the illegality of this practice, but upon this unfortunate occasion? And yet, my lords, monstrous as these suppositions are, they must (as I humbly conceive) be allowed of, or it must be granted that such acceptance of presents is not 'malum in se,' or contrary to the statute of Richard 2. And I hope it is plain, that this statute of Edward 6, is in effect a declarative law in those points.

My lords, the gentlemen of the House of Commons seemed sensible of these difficulties; and therefore they have, with great industry, endeavoured to distinguish what the Earl has done, from the common and ordinary way of accepting of presents, upon such occasions. They have told your lordships, that his method was haggling and extorsive; and have given it abundance of other hard names: they have to confirm it, informed your lordships, that the prices lately given, have been higher than those formerly accepted upon the like occasions: though they have not condescended to attempt the proof of it.

My lords, as the manner of the Earl's taking of presents will depend in a great measure upon the evidence, which has been offered to your lordships upon these Articles; I shall beg leave to take some short notice of it. As to the 9th Article, Mr. Thomas Bennet has been pleased to inform your lordships, that he did desire to have the Earl's recommendation of Mr. Hamersley, to succeed him as Clerk of the Custodies: and that being told at the second meeting with Mr. Cottingham, that a present would be expected, he said it was a very hard and unreasonable thing to expect a present from him, who had so lately paid a large sum upon his being admitted into his other office: but upon its being insisted on, that 100 guineas should be paid, he was forced to comply therewith, and agree to pay it.

My lords, I humbly insist upon it, that if an entire credit were to be given to what Mr. Bennet has said upon this occasion, it would not amount to a proof of the Charge contained in this Article: the corruption and extortion therein complained of, being restrained to the consideration of permitting and accepting the surrender of the office there mentioned; all the other parts of that Article being only introductory to, or in aggravation of that supposed offence. But Mr. Bennet has not mentioned to your lordships one syllable of the Earl's having refused to permit or accept a surrender of that office, or of his having received any sum of money in consideration of his permitting or accepting Mr. Bennet's surrender thereof.

But, my lords, we must beg leave to submit it to your lordships' consideration, what credit is to be given to Mr. Bennet's evidence, so far as it does go, for this purpose. The gentlemen of the House of Commons have thought fit to call Mr. Cottingham, as a witness to this Article; who owns that in his first discourse with Mr. Bennet upon this occasion, he told him he believed a present would be expected to the great seal, and that Mr. Bennet freely offered 100 guineas, before Mr. Cottingham spoke to the Earl about that affair. He expressly contradicts Mr. Bennet in what he said of Mr. Cottingham's insisting upon 100 guineas, and Mr. Bennet's agreement to give that sum at the second meeting, Mr. Cottingham swearing, that the offer of 100 guineas was voluntary on Mr. Bennet's part; and that it was at their first meeting. There are several other contradictions in their evidence; but I shall only take notice of that, where Mr. Bennet pretends, that Mr. Cottingham asserted he did not know Mr. Hamersley, his next door neighbour. This Mr. Cottingham denies, and Mr. Bennet is forced in some measure to retract what he had so positively sworn; and comes down to a belief only, that Mr. Cottingham said so, but will not be positive.

It is something surprizing, that after they have done Mr. Cottingham the honour to call him as a witness, and given him a credit by so doing, hints should be flung out, that Mr. Cottingham knows nobody, except where there is gold in the case; that gold is a great clearer of the eye-sight, and the like insinuations, to the lessening his character. But why then did they call him as a witness? Surely, my lords, if he is a person not to be believed, it was not altogether so proper to produce him as a witness before this august assembly. But, my lords, we shall ease them in that matter, by thoroughly establishing Mr. Cottingham's reputation; though it is something unusual to support the reputation of a witness produced by the other side: and we hope your lordships will then find no difficulty in determining whether Mr. Bennet or Mr. Cottingham deserves most to be credited.

In support of the 5th Article, Mr. Kynaston is called as a witness. I shall take no notice of any part of his evidence, but what relates particularly to the Charge in this Article, the money paid upon his admittance, and the circumstances of that transaction. Mr. Kynaston indeed has said, that he would willingly have paid but 1,000*l.* upon his admittance; and accordingly offered that sum, which Mr. Cottingham would not hearken to; and therefore he submitted to pay 1,500 guineas; but he owns, at the same time, that he has not a very exact remembrance of what passed upon this occasion. Mr. Bailey, to whom Mr. Kynaston refers, and who was his agent in this business,

in his evidence has given your lordships an account, that Mr. Kynaston, when he understood that 1,800 guineas was apprehended to be the present he intended to make, said, that he thought it was only 1,500*l.* but mentions nothing of the offer of 1,000*l.* It is very strange if that had been the case, that he should not have taken notice of that likewise. But Mr. Cottingham, who is again called as a witness, shews the reason why no notice could be taken of such an offer; and that is, because there really was none such. He denies that Mr. Kynaston offered 1,000*l.* and swears that the sum offered by Mr. Kynaston was 1,500 guineas; and withal declared, that he would acquiesce under what the Earl should think fit in that matter; and informs your lordships, upon his being interrogated by the gentlemen of the House of Commons to that purpose, that he never did acquaint the Earl with what passed upon that occasion till the whole thing was agreed and settled; and that, when he was informed of it, he expressed himself to be well satisfied therewith. Surely, my lords, here are no extraordinary endeavours or artifices used to enhance the price; no haggling, by first naming one sum, then another; but at once the matter is proposed, and at once agreed and concluded.

To prove the 6th Article, my lords, Mr. Thomas Bennet is called again; and here again the like misfortune happens as before; Mr. Bennet differs widely from Mr. Cottingham, who is called upon the same side to prove the same Article. Mr. Bennet says, that he acquainted Mr. Cottingham, that he thought 1,000*l.* was enough to give upon his admittance, with his reasons for such opinion; but that, however, he was willing to give 1,000 guineas. Mr. Cottingham has sworn that no such offer was made, that nothing of that nature passed; but that Mr. Bennet, upon being informed what had been done before upon the like occasions, freely offered 1,500 guineas.

My lords the very nature of the thing, upon the circumstances agreed on all hands, speaks strongly in favour of Mr. Cottingham, and in contradiction to Mr. Bennet, as to what is asserted by each of them upon this occasion. Your lordships observe what condition the Earl is agreed to be in at that time; had Mr. Bennet apprehended that he had so very hard terms put upon him, as he would have your lordships believe he did; would he not have stayed some little time, to have seen the effect of so violent a distemper as a pleuretic fever, which his lordship then laboured under in a very high degree? especially when Mr. Bennet appeared at the same time to be in no very good state of health himself; of which he was reminded by Mr. Cottingham; who was so far from acting the rapacious part, in behalf of the great seal (which was not in a way to suffer, by the admission of a person likely to make a new vacancy by death,) that perceiving Mr. Bennet to look yellow, and out of order, he desired him to consider what he was going to do, when he took a place for life in his condition. Mr. Bennet told him, it was only a cold; and that therefore he would proceed. This gentleman, who was as he pretends, so cautious as to the sum he was to give upon his admittance, and which he then thought to be so unreasonable, hurries on this affair, under these circumstances of his own, as well as the Earl's state of health; and though out of order, as he himself owned, presses an extorted sum of 1,500 guineas, into the hands of, probably, a dying Chancellor. Will not your lordships think it more likely, that Mr. Bennet apprehended, that as the price of things then went, he might not, under a new Chancellor, come into the office upon so easy terms as were then offered him; rather than that he thought himself to be hardly used upon that occasion? And here, my lords, I beg leave to take notice of what has been urged, to induce your lordships to look upon this acceptance of presents, by the Earl in particular, to be extorsive; which is, that the sums of money given upon these, and the like occasions, are lately greatly increased. Your lordships will be pleased to observe, upon what has hitherto appeared, that the sums taken by the Earl upon the admission of a Master in the room of one deceased, have been constantly less than what the Masters, who have resigned, have had as a consideration for so doing. And it is very easy to account for the late increase of the sums given upon these occasions, without any extortion in the matter. As personal estates have vastly increased within these few years, and settlements, and provisions for families, have been made out of the public stocks and funds, the business of the Court of Chancery hath increased proportionably; and consequently, people would be more desirous of, and give more money for the purchase of these offices, which were improved by such increase of business. And as the common interest of money is grown lower, it is natural to suppose, that people would be the more ready to invest their fortunes in those things, which were likely to produce a better income, even in proportion to the risk that was run upon their lives, than could be made of money in an ordinary way. But whether that, which I have mentioned, or whatever else may be the cause of it, it is so plain and notorious that all places and offices have of late years increased in their value, that it would be misspending your lordships' time to enter into the proof of it.

My lords, as to the admission of Mr. Elde into his office, and the acceptance of a sum of money upon that occasion, which makes up the Charge contained in the 7th Article; and as to so much of the 8th Article as relates to the like transaction with Mr. Thurston; there is not the least colour or pretence from the evidence which has been given to support those charges, to ground a supposition of haggling, or driving a bargain: On the contrary, from that very evidence it appears, that what was done by Mr. Elde, and Mr. Thurston, was per-

fectly free and voluntary; and attended with a good deal of solicitude and uneasiness in the latter, lest his offers should not be accepted; the circumstances of which I shall not trouble your lordships with repeating. And though from the troubles he has since met with in that office, he has something altered his opinion of it, your lordships will be guided by what he then thought, and acted. Your lordships will be pleased to observe from the same evidence, that great part of the money presented by those gentlemen has been returned to them again; and though it was some time afterwards before it was done, it is plain there was a much earlier intention of doing so. Mr. Elde has informed your lordships, that in May following his admission the Earl intimated to him, that he would return part of the money; and Mr. Thurston received several messages, which plainly appeared to be in order to a return of part of the money which he had given; though, on occasion of his being out of town, it was some time after before he knew the meaning thereof, or had the money returned.

My lords, there is one particular circumstance in the 8th Article, which has taken up a great deal of your time; that I mean, of the deficiency in Mr. Borret's office. Why that matter was inserted there, and why it has been so much laboured, and your lordships troubled with so much proof about it, I must own myself at a loss to conceive; unless it be allowed and admitted, that the taking of money, upon the admission of a person to the office of one of the Masters of the Court of Chancery, is not purely and simply *malum in se*, illegal, and contrary to the statute of Rich. 2, but that, if it be done to raise money to make good the deficiency in the office, as was done in the case of Mr. Edwards, which your lordships have upon this occasion heard of, it is right and well. How otherwise can the deficiency in the office be an aggravation of the supposed crime of taking a present upon the admittance of a person into it? Is it unreasonable to admit a new Master into an office wherein there is a deficiency? Is it not as necessary to fill up that vacancy as any other? Certainly more so, in order to have one, whose duty obliges him to a more particular care of the affairs thereof, which seem more to want it. The aggravation then of the fault, or rather the fault itself, must consist in the not applying the money received towards the discharge of the deficiency. But how can it be a fault not to do so, unless there had been an obligation so to have applied it? And how can there be an obligation to make such application of the money, where there is so strong an obligation, as has been insisted on, not to raise any money at all by such means? My lords, we humbly apprehend, that the endeavour to aggravate what is charged as a crime in this Article, has weakened, at least, what is laid as the foundation for its being a crime; and this with little or no success in the proof attempted to be made of this matter; so far, I mean, as relates to the Earl's knowledge of the deficiency, or his want of care to be informed of the state of that office.

I won't repeat what Mr. Godfrey has said upon this occasion; your lordships perceive that he and Mr. John Bennet were thought the fittest persons to inspect the affairs of Mr. Borret, after his decease; and were accordingly appointed to do so: And upon having examined things, as well as they then could, were both of opinion, as Mr. Godfrey says, that there was no likelihood that there would be any deficiency; and with this the Earl was acquainted. Mr. Bennet, indeed, differs something from Mr. Godfrey, as to the account which he gave of this matter; but not so much, though his account was to be taken, as would answer the purpose for which he was called; the aggravating the Charge in this Article against the noble Earl, who, there is no room to doubt, would have acted as generously in this case, as he did in the case of Mr. Edwards, upon his coming into Dormer's office, if the circumstances, as represented to him, had been in any near degree alike.

My lords, I have thus stated the matter of these several Articles, to the best of my remembrance, in its true light, as it stands upon the evidence already given. We shall beg leave to call some witnesses to prove, that several noble and great persons have taken presents upon these occasions; men of excellent characters; some of whom several of the gentlemen of the House of Commons have taken such notice of, that I may safely venture to say, they will concur in the opinion, that they were persons of so much integrity, that they would not have taken such presents, if they had thought it illegal so to have done; and of so great abilities, that their judgment must be of the greatest weight in this point. We shall farther trouble your lordships to explain the nature of the payment of 64*l.* which Mr. Thomas Bennet told your lordships he made, over and above the 100 guineas paid by him on account of the office of Clerk of the Custodies. He might, no doubt, if he had pleased, have informed your lordships, that the most part of this 64*l.* was either paid to the clerks of the office, or belonging to other officers, and that not above 33*s.* came to the great seal: and we apprehend that to have done so, would have been more agreeable to the sincerity with which a witness ought to speak, than to have left it in that general manner, where it might look like another payment to the Earl. And I hope your lordships will excuse my observing upon this occasion, the unhappy circumstances of the noble Earl at the bar: If he takes a small sum, as this of the 100 guineas for instance, it is poor, pitiful, and a prostitution of his honour; if a larger sum is taken, he is avaricious, greedy, rapacious, and I don't know what: Though your lordships will observe, the sums accepted are regulated according to the nature of the office on account of which they are given. My lords, his very care in other instances is made his fault, his actions

must be all supposed to be done with corrupt views; and yet his not acting is equally blamed; it is carelessness, and neglect. This is the light in which his whole behaviour has been set before your lordships, and that with all the aggravations and vehemence imaginable. But it is your lordships who, in a superior and calmer station, are to weigh and judge of these matters. It is from you the noble Earl is to expect judgment; and it is his happiness, that it is so. And in order thereto, when we have laid this evidence before your lordships, together with an order, which shews the payment of the monies received from Mr. Thomas Bennet and Mr. Kynaston, into the Court of Chancery; we shall submit the matter of these Articles to your lordships. And notwithstanding all the severe things which have been said upon this occasion, we humbly hope your lordships will be of opinion, that the noble Earl at your lordships' bar is not guilty of any of the Charges contained in these Articles.

Serj. *Probyn.* My lords, we now proceed to call our witnesses, and to prove the several facts we have opened; and we beg leave to proceed in the same method as the gentlemen, who are the Managers for the House of Commons, have done. As they began with the 9th Article, so we in our evidence shall likewise begin there; and shew that presents have constantly been made to the great seal upon all admissions into the office of the Clerk of the Custodies; and that in many other offices under the direction of the great seal, presents have been usually made by the respective officers on their admissions; and this hath been the known uninterrupted usage; and every chancellor hath taken them as customary presents. We desire, in the first place, that Mr. Roger Lewis may be called.

Mr. *Roger Lewis* sworn.

Serj. *Probyn.* We desire he may be asked, how long he hath been concerned as a deputy in the office of the Clerk of the Custodies?

Lewis. I have assisted as Clerk of the Custodies of lunatics and idiots for the space of about 35 years.

Serj. *Probyn.* I desire he may be asked, who was the first that came into the office of Clerk of the Custodies in his remembrance?

Lewis. Mr. Henry Wynne was the first that came in after I was clerk there.

Serj. *Probyn.* Who succeeded Mr. Wynne?

Lewis. Mr. Roger Thompson.

Serj. *Probyn.* I desire he may be asked, whether Mr. Thompson be now living or dead?

Lewis. Mr. Thompson, as I have been informed, hath been dead about these 9 or 10 years past.

Serj. *Probyn.* I desire he may be asked, whether any present or compliment was made to the great seal on Mr. Thompson's admission?

Mr. *Plumner.* My lords, I object to the answering of that question; and desire to know, whether your lordships will have evidence against gentlemen that are dead, who are no way capable of answering for themselves before your lordships here? If my lord can shew any title or right he had to sell this place, we are ready to hear him; but to give evidence against a person that is dead, and cannot speak for himself; I submit that to your lordships.

Mr. *Lutwyche.* My lords, this matter is very proper to be objected to now, and it is very necessary for your lordships' determination in the beginning of this affair. I see by this question, and their opening, what large compass the gentlemen have taken, not only as to these offices, but as to many other offices for which presents were given. I take the proper question before your lordships to be, Whether this be lawful by the laws and statutes of the realm? And if that be the question, I submit it, whether it is material to give an account what other persons have done? Whether, when a person is brought upon a prosecution for an offence against the law, it be material for him to say, that other persons have been guilty of the same crimes? This is a question at law upon the construction of the statute; and they say it is necessary for them to give these instances, to shew the judgment of those great persons upon the act of parliament; but sure I am, it was never yet attempted to give in evidence the actions of other persons in order to expound a statute. The exposition of a statute must be founded on the words of the law, and not on the actions of other persons. In all the experience I have had in cases of prosecutions for crimes founded on the common law, or on acts of parliament, gentlemen argue from what the law is, what authorities have been in those cases, and what the construction hath been in former judgments. My lords, this is a matter of great consideration to your lordships, not only upon the account of the precedent, but also upon the account of the time that your lordships are like to spend, if you are to go through all the offices of the law, to shew how many great men have accepted presents. It will take up a great deal of time, without any fruit at all. But, my lords, there are other considerations which will prove it unreasonable to admit of this evidence: At present your lordships have under your consideration the case of this noble lord within your bar; but would they in defence of him impeach others, not here to defend themselves? Many of them are dead, others are living: Will you try persons not accused, and without being present to answer for themselves? But, my lords, with respect to ourselves, is it reasonable for us to take upon us the examination of several facts, without knowing who the persons charged are, what the circumstances of the case were? Are we to shew the difference, or state the circumstances? It is impossible for us to do it. My lords, this being the nature of the case, it is a matter for your lordships' judgment now in the beginning, that your lordships may see the extensiveness of the evidence they have hinted at, and intend to produce. That which we in-

sist upon is two things, that it is not material, and that there is no manner of notice for the persons so charged to make any defence, or to shew how the circumstances of the case were. So, my lords, we must beg leave to have your lordships' judgment in this matter.

Sol. Gen. My lords, if the noble lord produceth any one to make out his innocence, we do not oppose it. But if the noble lord endeavours to shew what the law is, from the practice of other people, it is altogether improper. It is impossible that the law can be judged of by the practice of other people in committing the same facts. That can't have the weight of the opinion of a great man. The opinion of a learned person, not concerned in the question, is an opinion of weight; but the opinion of a person concerned in the question, is not to be looked upon as of any authority. If the noble lord makes use of this kind of evidence, by way of mitigation, or of lessening his offence, in that view it can be of no significancy: because the aggravation or mitigation of the noble lord's offence must arise from the particular circumstances, manner, and facts of his offence. We must submit it therefore to your lordships' consideration, whether this is a proper enquiry or no.

Serj. *Probyn.* My lords, we beg leave to insist upon it, that this is a proper question, and very material for the noble Earl's defence. He hath insisted in his Answer, "That what is objected to him in this instance, hath been long used and practised in the time of his predecessors; and that such presents have been reckoned among the ancient and known perquisites of the great seal; and the making and accepting thereof hath been notorious to all the world, and never before looked upon to be criminal, or complained of as such; and that he humbly hopes, that the giving or receiving of a present on such an occasion, is neither criminal in itself, nor by the common law of this realm; and that there is not any act of parliament by which the same is subjected to any punishment or judgment, which can be prayed in this prosecution; and the said Earl further hath said, that he thinks himself obliged humbly to lay this before your lordships, not only in his own defence, but in vindication of the honour of so many great and excellent men, who have been his predecessors in the same office, and have all along done the same, for which he is now complained of; and also of others, who have been lord chief justices of the King's-bench, and Common Pleas, Masters of the Rolls, and judges, who have likewise received presents in money, upon the admission of the several officers under them in the respective courts of justice wherein they presided; and who, the said Earl is assured, never apprehended themselves to be guilty of any crime against any the good and wholesome laws or statutes of this realm." And therefore we take it to be our duty to give proper evidence to support this part of the noble Earl's Answer. But, my lords, it is objected by the gentlemen that are Managers for the House of Commons, that they are not prepared to enter into this proof, because they had no notice that such evidence would be given: In answer to which we humbly submit it, that the Answer the noble lord hath given, that several presiding officers in the courts of law and equity have always received such presents, is sufficient notice to them to be prepared to answer such evidence as might be offered to support this allegation. My lords, as to the other objection, that the opinions of great men are not evidence in their own cases, we submit it that in this case it is a material circumstance. Though the precedents of great men, (whose names they are unwilling to hear) who have taken presents in like cases, and not thought it criminal, may not controul your lordships' judgment in this particular; yet I humbly apprehend that such instances cannot but have great weight in the event of this case. They are material circumstances, strong inducements to incline your lordships to believe, that this noble lord had no avaricious, no corrupt design, in accepting the common, customary presents that were voluntarily tendered to him. And since it is made so material a part of his defence, and that he might well think himself innocent and secure in following the examples of so many honourable and learned persons, of which we are prepared to give your lordships many instances in evidence; and since they have notice of it, and that the noble lord hath insisted upon it in his Answer, we humbly beg your lordships will admit us to give the several instances in evidence.

Com. Serj. My lords, I beg your lordships' patience. My lords, we humbly apprehend this is very proper and regular evidence. I think there can be no evidence more proper. If the noble lord should have the misfortune to be thought culpable, will he not appear under another view to your lordships, when he hath had the concurrence of several great persons, of whose integrity, honour, and knowledge, no question hath ever been made? If he himself hath introduced this practice, and set it up by himself, it will then most certainly be an aggravation; if he hath done no more than others have done, it will be an extenuation. My lords, taking it in that light, there is no reason why this evidence should not be given. But I hope your lordships will farther consider of the present case: here is a law insisted upon, of several hundred years standing, that makes this criminal: it is owned that there hath been no determination, or judgment at law that this is criminal: practice, especially in respect of old statutes, hath oftentimes been allowed and admitted to explain the sense and meaning of those statutes. There are no records preserved of this, and therefore we are under a necessity to confine ourselves to such evidence as we can produce of living witnesses; and therein we apprehend we are proper, as it is part of the matter in issue before your lordships. Your lord-

ships are as well to try the Earl's Answer, as the Commons' Articles. Another circumstance they are pleased to mention against receiving this evidence, is, the taking up of your lordships' time. Your lordships have had the goodness and justice to hear, with great patience, a very long evidence, with repeated observations and openings of the Articles, in order to prove a noble peer, one of your own body, to be guilty: can it be supposed that your lordships will not have that patience, which is due to all people in favour of innocence, and when one of your own body stands impeached? For these reasons we humbly hope that this evidence shall be admitted; and that the noble Earl shall have the benefit of this explanation, what the sense of so many great and excellent men hath been of this old and doubtful statute.

Mr. *Robins.* My lords, we apprehend your lordships will not be of opinion, that this will be to defend the present Impeachment, by the impeaching of others. We lay it down as the foundation of our acting, that our predecessors have done the same, notwithstanding this statute of Edward 6, and therefore it is a reasonable inference, that this was not taken to be within the said statute. We apprehend it cannot reflect upon any that are either dead or living; and that, as we are in defence of this noble lord, we are at liberty to examine witnesses, to prove that other persons, his predecessors, have done the same.

Mr. *Strange.* My lords, I apprehend we have the same right to justify ourselves by precedents, as they have to accuse us by precedents. What the noble Earl's predecessors in other instances have done, hath been mentioned by way of aggravation. The case of Dr. Eddisbury hath been mentioned over and over by the gentlemen of the House of Commons; and they have aggravated the offence of the noble Earl for not following that precedent; and as they had a right to aggravate the Earl's offence, by not following the precedents of his predecessors, so we think we have the same right to shew in other instances, that we have followed the examples which have been set us by our predecessors. But they say, this is against law: whether that is so, or not, is the question; and it will be material for the decision of that question, to take into your consideration, what hath been the opinion of great men, in all ages, upon this act of parliament. Continual usage, from time to time, even from making of the act of parliament, is the best exposition of that law. Cotemporary usage, or the opinion of those, who were at the time of the making of a law, hath always been esteemed the best interpretation of that law; and therefore, as we shew the usage to be conformable to what we now insist upon, I humbly hope it will have a great influence upon your lordships, as to the exposition to be now put upon this act of parliament: it hath been said, this way of proceeding tends to accuse great persons of honour, &c. some that are dead, and some that are now living; we shall not enter into so nice a debate; it is sufficient for us that it is proper and necessary evidence for the defence of our client. It is a material evidence in this case, whether other persons have disposed of these offices, and have incurred any penalty: if they have done it, I humbly apprehend that no objection remains against our entering into the evidence of that kind. Whatever is your lordships' judgment in point of law, it is material for your lordships' consideration, whether this noble lord hath set this on foot of his own accord, or hath not trod in the paths of his noble predecessors? Your lordships will take it into your consideration, and whatever the point of law may happen to be, it must be said, that if this noble lord did err, he erred with his predecessors.

E. of *Macclesfield.* My lords, I would not trouble your lordships, if I did not think it necessary to insist upon your lordships admitting this evidence: indeed, if I thought it would impeach the character or reputation of any of the noble lords, who have been my predecessors, whether they be now dead or alive, I would undergo any punishment rather than do it. But I hope it was innocent, both in them and me; and that its being done by persons of such unblemished honour, will be one strong argument of its being so; and, my lords, I protest their example was the single reason with me for doing of it; and if it had not been done before, I would not have done it: this was the true ground of what I have done. For what these gentlemen say, my lords, that this is not material, and that the law must be proved by law books and judgments, I thought the common law was common usage, and that which hath constantly and openly been done without being censured or blamed, cannot be contrary to common law. If this be not allowed, I am highly obliged to these gentlemen, that they have not accused me for taking money in many other instances, relating to my office; to instance in one only, upon the passing of every patent there is a small fee due, and constantly paid to the great seal; if they had accused me of this, and called it criminal, I know not what to have said to it, unless usage and custom had justified it; I claim it as a right, and unless usage will prove the right, I know no other way. I own this is something different: in that case, I insist on a particular sum by usage: I do not insist in this case that there is a particular sum due as a fee, but that I had a right, or liberty, to accept of such a sum as the party should give: but, say the gentlemen, this evidence is to make other persons criminal; that is very true, if this be a crime. These gentlemen take it for granted: but whether it be a crime or no, will be for your lordships' final determination: and I hope your lordships will not be of opinion that it is a crime. If it should come out to be in your lordships' judgment a crime, it will be a great censure upon my predeces-

sors, who all, as it is well known by every body, did the same thing. But if this be understood to be a matter, that is admitted to have been practised, and to need no formal proof, I had rather let this examination alone: it is uneasy to me, to enter upon any thing that can draw a reflection upon any person: therefore I submit it to your lordships.

Serj. *Pengelly.* My lords, the Managers are accountable to the Commons for any thing they admit without their direction; therefore, unless they are satisfied and convinced that they ought to admit it, it is not to be expected for the Managers to do it. It is said, that the things offered are in extenuation: that it would be a greater guilt, if there were not former examples to justify it: I apprehend, for that reason, it is an improper time to insist upon this now: because matters of aggravation or extenuation must come subsequent to your lordships' determination on the Articles, and will be for the consideration of your lordships, when you come to consider of the judgment that is to be given. I have known, by frequent experience, in prosecutions of a criminal nature, that where the defendant hath been convicted, he hath been allowed to lay circumstances before the Court in mitigation of the punishment: and if, hereafter, this comes to be considered of in this manner, the Managers will have an opportunity to give a proper answer thereto. If in this answer he had insisted on it as an established fee supported by custom, and had claimed it as of right, it had been proper to have examined witnesses in support of that; but when he insists upon it as a matter of discretion, and of explanation of an act of parliament, we cannot admit it. It is not proper to give in evidence, that which doth not make good the defence in answer to the Articles. We cannot admit a thing of this nature, which may be attended with great inconveniencies. We do not know what may be grafted on such an admission; therefore we beg leave to submit it to your lordships' determination.

Mr. *Lutwyche.* My lords, It is said very roundly, that this is an old, doubtful statute, and therefore you ought not to take notice of it. As to the doubtfulness of it, I believe it is too plain; as to the obsoleteness of it, it is a statute that is read every year in the Court of Exchequer. And therefore, whatever doubts may be of this matter at the common law, yet this statute makes it plain. And I desire the counsel for the noble lord to tell us, where any statute is more plain and positive; and wherein they have shewn the least doubtfulness in the world, but rather object that it hath gone too far. Doth any judge in point of evidence, on an indictment for breach of a statute-law, permit persons to give evidence that others have been guilty of the same facts, and that therefore it is no breach of the law? Suppose this is to be considered as doubtful, on construction of the statute, what then is the common ordinary method? It is well known, that the jury find the fact specially, and it is referred to the Court for their opinion on the law. My lords, give me leave to mention how this matter is; here is an act of parliament, a general act, the judges are to take notice of it, it is plain and positive; the counsel make a doubt on the construction of this statute; it is insisted upon, that other people have done it, and have not been punished; and would such a thing be ever permitted to be found by a jury, or would any regard be had to it if found? I apprehend the noble lord, who hath been a great master of evidence in his time, would not have permitted it to be done: they have shewn no precedent for it: in its own nature it is unreasonable. Are we to examine into the particular manner and circumstances of every particular case of the several persons that are now either dead or living? It is unreasonable, it is unprecedented, to offer such evidence; and I hope your lordships will not admit of it.

Mr. *Plummer.* My lords, the counsel for the noble lord take that for granted which we deny. The admitting these witnesses to be examined, is admitting that it is not a crime. Reputation is of great value, and great care ought to be taken of it; and we are willing to take care of the reputation of the noble lord's predecessors. I am not a lawyer, but I never heard that that was not a crime, which an act of parliament says is so. And that this is a crime, I beg leave to remind your lordships, that he himself declared so to the Masters in Chancery, that they had bought their places against law. I take that to be a fair confession that his opinion was, that it was a crime.

Lord *Lechmere.* Before the counsel withdraw, I would have this question explained to me by the counsel of the noble lord, whether this practice be insisted on as a proof of a right in the great seal to take this as a perquisite, or whether it be offered as an extenuation?

Serj. *Probyn.* My lords, we insist upon it in both respects.

[Then the Managers and Counsel were ordered to withdraw; and after some time, being called in again,]

Lord Chief Justice *King.* Mr. Serjeant Probyn, It is their lordships' judgment that you are at liberty to proceed in your evidence, as you were going on.

Serj. *Probyn.* My lords, we desire Mr. Roger Lewis may be called again.

Mr. *Lewis* called.

Serj. *Probyn.* My lords, I desire this witness may be asked, how long he hath been a deputy in the office of the Clerk of the Custodies?—*Lewis.* About 35 years.

Serj. *Probyn.* Who was then in the office?

Lewis. Mr. Henry Wynne.

Serj. *Probyn.* How long did he continue in that office?—*Lewis.* About twelve months.

Serj. *Probyn.* Do you know who succeeded him?—*Lewis.* Mr. Roger Thompson.

Serj. *Probyn.* My lords, I desire he may be asked, whether any present was made by Mr. Thompson on his admission into the office?

Lewis. I do not know of any present made by Mr. Thompson.

Serj. *Probyn.* By Mr. Wynne, or Mr. Thompson?

Lewis. No; but Mr. Wynne told me——

Serj. *Probyn.* Is Mr. Wynne living or dead?

Lewis. He is dead.

Serj. *Pengelly.* My lords, we beg leave to object to this: what a particular person told him is not evidence; we hope this shall not be admitted.

Mr. *Lutwyche.* They know this was never allowed.

Serj. *Probyn.* If the man be living, the objection is good, but now he is dead, we hope it may be allowed.

Com. Serj. The gentlemen object, that we are not at liberty to ask what hath been declared concerning that matter by a person that is now dead; we humbly apprehend it is within the rule of evidence, and I must appeal to the memory of your lordships, whether it is not good part of the evidence that hath been given by the Managers.

Earl of *Macclesfield.* My lords, what we are giving evidence of, is of a thing transacted 35 years ago; the parties are all dead: he is about to give you an account of what he did, and was said to him at that time by his master, in his transacting that affair. If the person that said it were now alive, to be examined to it himself before your lordships, it would not be evidence without examining him; but if dead, what he said concerning this fact may be given in evidence, it is concerning the party's own act, and what he told him at the time it was doing. Therefore we hope they will not oppose this evidence, which in the nature of the thing is all that possibly can be now given.

Sol. Gen. My lords, I hope this is what your lordships will not suffer to be done. I never knew the sayings of a dead man given in evidence to prove a particular fact: they have been only admitted in proof of general usages and customs; but as for a particular fact, lying in the knowledge of a particular person, by his death you have lost your evidence.

Earl of *Macclesfield.* My lords, if they will insist upon it, we must withdraw.

Mr. *Plummer.* This man here is upon his oath; but the evidence that he must give of the saying of another, must be of a saying not upon oath.

Lord *Trevor.* If there be a difference in opinion between the noble lord and the Managers, they must withdraw. But I don't see any reason to withdraw. I will tell my opinion, that such an hearsay evidence is no evidence.

Com. Serj. I desire he may inform your lordships, whether he knows any thing as to the transaction, of his own knowledge?

Lewis. I know that Mr. Wynne, whether he had surrendered, or was going to surrender, I don't remember, but he told me——

Serj. *Pengelly.* My lords, they are going on again in the same way.

Serj. *Probyn.* Do you know any thing of your own knowledge?

Lewis. I had money in my hands of Mr. Wynne's. He told me——

Serj. *Pengelly.* Evidence of this sort is by your lordships' judgment not to be permitted.

Serj. *Probyn.* He informs your lordships, that he hath known this office 35 years. Now, I desire that he may declare what hath been the usage on surrenders and admittances into this office of Clerk of the Custodies, whether any present, or gratuity, hath been made to the great seal?

Serj. *Pengelly.* This is the same thing again.

Sol. Gen. If gentlemen put this general question with no other view but to draw out what your lordships have determined to be no evidence, we must oppose it. It is a plain question, whether he knows of his own knowledge that any money was given? And we desire he may be confined to his own knowledge.

Earl of *Macclesfield.* The gentlemen say, that as to matters of usage, it is usual to enquire what old men have said and declared. I apprehend this is a matter of usage we are now enquiring after; but if your lordships are of opinion that this should not be asked, I believe he doth not know any thing of his own knowledge of the money being actually paid to the great seal.

Serj. *Probyn.* My lords, we desire that Mr. William Oaker may be called.

Mr. *Oaker* sworn.

Serj. *Probyn.* My lords, we desire that Mr. Oaker may be asked, whether he knows of any demand, or claim, made upon the admission or surrender of the Clerk of the Custodies, and by whom?

Serj. *Pengelly.* My lords, this question is contrived in an odd manner. The question must arise upon the fact, not antecedent to the fact. The question of any claim before should be, whether he knows of any money paid, and in what manner?

E. of *Macclesfield.* It is the stronger, if it is claimed and paid: but I apprehend, if it were only claimed, it is evidence.

Oaker. I don't well understand the question as it is put; but I remember in my lord Cowper's first time, in the year 1710, that office was transferred from Mr. Thompson to Mr. Edwards; I was then secretary of the lunatics, and I remember I enquired of one or both of those gentlemen, if any present was made to my lord on that occasion; and was answered, That nothing had been usually given in the case of that office, and that they had satisfied my lord thereof. Afterwards, when my lord Cowper had the great seal again, and I was again secretary of the luna-

tics, his lordship was pleased to observe to me, that he had suffered himself to be imposed upon in several matters, when he had the seal before, and instanced particularly in the affair of transferring the office of the Clerk of the Custodies; and said, he was very well satisfied those gentlemen had imposed upon him, by assuring him that nothing had usually been given on transferring that office; for he was well assured there had been presents on that occasion, and did not see any reason why there should not: and his lordship ordered me to enquire, as particularly as I could, what had been given, and by whom, that he might know what to do if a thing of that kind should happen again.

Mr. *Plummer*. My lords, I believe this gentleman was servant to my lord Cowper, when he was chancellor last; I desire to know if any vacancy of this office happened in the last time that he was chancellor?

Oaker. There was a vacancy in the last time: I don't know what sum of money was given for it.

Mr. *Plummer*. My lords, I desire this witness may be asked, if ever he knew that my lord Cowper did take any thing for the surrender of this place?

Oaker. I don't know, I believe he had nothing the first time; but he thought himself imposed upon in it, and bid me enquire about it. As to the second time, I never could inform myself what was done in it.

Lord *Lechmere*. I desire he may be asked, who it was that surrendered this place of Clerk of the Custodies, and to whom? Name them.

Oaker. The first was Mr. Thompson, who surrendered to Mr. Edwards, he surrendered to Mr. John Bennet, and Mr. John Bennet surrendered to Mr. Thomas Bennet.

Mr. *Onslow*. My lords, I desire, before Mr. Oaker goes, that he may explain himself, which of those two times it was that my lord Cowper said he was imposed upon?

Oaker. It was the first time.

Mr. *Onslow*. I desire to know if he took any thing at either time?

Oaker. I don't know otherwise than as I have before declared.

Serj. *Probyn*. My lords, we desire that Mr. Edward Dupper may be called.

Mr. *Dupper* sworn.

Serj. *Probyn*. My lords, I desire that Mr. Dupper may be asked, whether he knows of any sum of money that hath been paid, or received on the surrender or admission of any Clerk of the Custodies?

Dupper. I did not see any money paid. I did give my lord Macclesfield an account that there had been 250 guineas paid upon a former surrender of that office before this Mr. Hamersly was admitted.

Serj. *Probyn*. From whom had you that information?

Dupper. My lords, I don't know how far I may be permitted to name that person's name.

Many Lords. Name him.

E. of *Macclesfield*. Was it from one that had the custody of the great seal?

Dupper. Yes, my lords.

Lord ———. Whom was it from?

Dupper. I had it from my lord Harcourt. My lords, I cannot say I saw the money actually paid; neither can I say, that his lordship received this money. But I was a servant to my lord Harcourt, and his lordship kept an account of the profits of the office of Lord High Chancellor in his time, in his own writing; and I made two copies of that account in a large hand-writing for his lordship's use; and I generally made two copies of each, for fear one should be lost or mislaid when wanted. One of these copies I kept by me, which I have here; in it is an account of the yearly profits of that office, and there is this particular item of 250 guineas received for the surrender of the office of Clerk of the Custodies, which I copied from a memorandum, or account of his lordship's own hand-writing.

Serj. *Pengelly*. My lords, I don't know what he is going to do. I hope there is very little notice to be taken of what he hath said. A man tells a story that is a servant: I hope no credit will be given to what he says.

Com. Serj. My lords, I desire he may inform your lordships, when it was he gave an account to the earl of Macclesfield, that so much money had been paid, and upon what occasion it was?

Serj. *Pengelly*. Give an account! he knows nothing.

Com. Serj. My lords, I hope you will not think it an improper question. He says, that he gave an account, I desire to know what he gave an account of, and if he knows upon what occasion it was?

Dupper. My lords, the reason of my giving this account was, here was a discourse between Mr. Cottingham, who was my lord Macclesfield's secretary, and myself, about the office of Clerk of the Custodies. Mr. Cottingham told me, that Mr. Bennet was going to surrender his place of Clerk of the Custodies: I asked him to whom? He told me, it was to his neighbour Mr. Hamersley. I answered, I am very glad to hear it; there will then be a piece of money for my Lord Chancellor. Mr. Cottingham said, that is more than I know; was there ever any money paid upon the transfer of this office? I said, Yes, I remember there was, and I never knew any offices or places under the great seal transferred without an acknowledgment paid to the great seal. He asked me what? I told him, I had a copy of the account of the profits of the great seal, kept by my lord Harcourt in his time, and that I would look into that copy, and tell him what had been paid on the surrender of that office. I did look into that copy, and the next day I told Mr. Cottingham, that 250 guineas had been paid on the surrender of that office. And afterwards, and before the transfer, I told my lord Macclesfield of it.

Mr. *Strange.* When Mr. Hamersley was named, I desire to know if Mr. Cottingham did not at that time call him his neighbour?

Dupper. I did not know Mr. Hamersley at that time; but Mr. Cottingham called him his neighbour.

Mr. *Plumner.* My lords, I desire he may be asked, if he told my lord Macclesfield of this before Mr. Bennet resigned to Mr. Hamersley?

Dupper. Yes, I did, my lords.

Mr. *Lutwyche.* My lords, I desire to ask him one question. I think he is pleased to say there is no place under the great seal but what an acknowledgment is taken for: I desire to know whether he himself hath not a place given him by that noble lord for his life?

Dupper. No, my lords.

Mr. *Lutwyche.* Had you no place at all given you?

Dupper. I have the reversion of a place, which is not fallen as yet.

Mr. *Lutwyche.* What place is that?

Dupper. The sealer's place.

Mr. *Lutwyche.* Do you enjoy that place?

Dupper. No.

Mr. *Lutwyche.* Was there any money given for that place?

Dupper. No, Sir: It is what I had for 15 years service. I was his clerk, and I acted as his steward in town and country a great many years; and his lordship was pleased to give me that reversion as a reward for the labour and pains I took in his service.

Serj. *Pengelly.* My lords, I desire he may be asked, how long after it was that he carried this account to Mr. Cottingham that he speaks of, how long after he had found it?

Dupper. I don't exactly remember: But as near as I can guess, it was the next day, the first time that I saw him afterwards.

Serj. *Pengelly.* I desire he may be asked, whether at that time he gave satisfaction to Mr. Cottingham, that it ought to be insisted upon?

Dupper. I told him so much had been given for the surrender of that office, and I never knew of any office under the great seal transferred without money.

Mr. *Lutwyche.* I desire Mr. Dupper may acquaint your lordships what the yearly value of that office is that was given to him?

Dupper. I never was in possession of it.

Mr. *Lutwyche.* Do you know what is the yearly value of it?—*Dupper.* No.

Mr. *Lutwyche.* Can you give no account of it?

Dupper. No: The man hath been in possession of it, I believe, these three-score years, and I believe he will live these three-score years longer.

Serj. *Probyn.* My lords, we desire that Mr. Laiton may be called.

Mr. *Laiton* sworn.

Serj. *Probyn.* I desire he may be asked, whether he was not formerly a cursitor?

Laiton. I was a cursitor almost 43 years.

Com. Serj. I desire that he will inform your lordships, whether any money was paid, either by him or any other?

Serj. *Pengelly.* My lords, we beg leave to understand your lordships' resolution, whether it extends to allow an examination as to the selling of any other offices not contained in the Articles?

Serj. *Probyn.* My lords, we shall endeavour to prove that acknowledgments have been anciently and usually paid upon admissions into all offices under the great seal, and this is part of this noble lord's defence, that it is usual for the great seal to take money for the transferring of those offices. This witness was one of the cursitors in the Court of Chancery; therefore I hope it is proper to give evidence of money given for those offices, as being offices under the great seal. Therefore, my lords, I desire he may be asked, whether he hath known of any money paid to the great seal upon the surrender or admission of any cursitor?

Mr. *Lutwyche.* My lords, I submit it whether it is proper for your lordships to let them into this evidence. I take it, that the immediate questions before your lordships are only upon two sorts of offices, one of the Clerks of the Custodies, the other the Masters in Chancery. Now, whether your lordships will let them into an evidence of all the offices of the kingdom, which is very extensive, I submit to your lordships' consideration.

Mr. *Plumner.* Your lordships observe, that we have not gone upon the 10th Article, where we have laid that he sold several other offices: considering the great extensiveness of it, and that it would draw this trial into a great length, we have waved it; and therefore submit it to your lordships' consideration, whether he shall make his defence to any thing we have not yet given evidence to?

Earl of *Macclesfield.* This would be to put a great difficulty upon me. The Charge against me being founded upon a supposition, that the taking money upon admitting persons into offices in the Court of Chancery is criminal; part of my defence is, that the constant practice of my predecessors shews the general opinion to be otherwise, and therefore I have by my Answer insisted upon it generally, that not only for the one particular office of the Clerk of the Custodies, or Masters in Chancery, but for all other offices under the great seal, money hath been given; therefore, whether the office for which I prove the money to be given, be one of the offices charged in the Articles, and proceeded upon, or another not charged, or charged and waved, it will be the same thing. The argument is the same with respect to the foundation of the accusation, if in all other offices, of which persons now living can give an account, monies have been taken without crime, and without blame; by parity of reason it may be taken in these. I offer this evidence not to shew I am not criminal with respect to the cursitors' offices; their waving that general Article which comprises them, admits it; but

to make out that branch of the induction, in order to infer from the whole my not being criminal in the particulars they do proceed upon; for if it was no crime to take money from the cursitors, and all the rest, besides the Masters in Chancery and Clerk of the Custodies, it is no more so to take it from them: if this objection be allowed, the proof, which in its full latitude would be of great extent, and go to all my predecessors within 50 or 60 years, will be confined to a very narrow compass, when restrained to what account can be given in only two sorts of offices, by persons who saw the money paid, and happen to be still alive. Besides, for strengthening that argument from other instances, I have in another part of my Answer insisted, that other persons of great wisdom and honour have likewise, without scruple, and without censure, disposed of other offices for money; that this hath been constantly practised in the disposal of all sorts of offices in Westminster-hall, money hath been taken for them all along; this proof I must be cut off from too, if I am to give evidence only of what was done in the case of those offices for which they proceed against me: I hope, therefore, the gentlemen will not oppose the going on to make the proof proposed by my counsel.

Serj. *Pengelly.* My lords, if it be put in this general manner of all other courts, and in all other instances, we apprehend it will be a very extraordinary examination. A person is charged with a particular charge of one fact, and he would examine to another, with which he is not charged. This is beside the issue, and not before your lordships. Here is a Charge by the Commons of Great Britain, and an Answer and defence to that, which can go only to those particular offices charged. Now, to introduce an evidence of this nature, is exceeding any rule or instance that hath been ever heard of. If they apprehend, by proposing and insisting on it in this High Court of Judicature, they shall be allowed to proceed in a method wholly new, we can't tell the consequence of such an allowance: and it is to no purpose for the Managers to come prepared to examine to a particular fact stated between us, when there may be ten thousand things insisted on that are not in issue.

Lord Viscount *Townshend.* I can't say this is within the rule your lordships laid down. If it is insisted upon, the counsel must withdraw.

E. of *Macclesfield.* My lords, I don't know whether this will not go through a great part of my defence, which will be to shew that other offices have been disposed of by the Master of the Rolls, the chief justices, and other judges. This is in my Answer: the Commons had notice of it; and they have joined issue upon it. I wonder to hear it said they have not joined issue, when in the Answer it is insisted upon, and they have replied thereto. This is a thing that these gentlemen are very well aware of; it is so general and universal a thing, that every body knows of it. I don't know whether it is intended to make any distinction between this case, and what is done in other cases; if they do, I would be glad to hear it; if they do not, then I would beg your lordships' determination upon it.

Serj. *Pengelly.* My lords, we are not to declare our opinion, whether there is any difference, or not; the question is in point of evidence.

Sol. Gen. My lords, I don't apprehend that we have joined issue on every thing that the noble earl hath thought fit to put in his Answer. The Commons have charged him with several crimes; he hath answered to those crimes: the Commons reply, that they are ready to make good their Charge. By this, issue is joined upon every thing in the Charge; but not upon every foreign thing that he hath put into his Answer. We insist that he is not to give evidence of the sale of any other offices, but of those that he is particularly charged with. As to the cursitors' office, and other offices that he is not charged with, we say he is to give no evidence.

Mr. Lutwyche. My lords, because it is insisted upon that whatever this noble lord hath said in his Answer we have replied to; I would observe that the very replication takes notice of this very thing, and was one of the things considered of by the Commons, and therefore the reply is, "That he hath endeavoured to evade the enquiries into his own crimes, by insinuating facts not material to the matters charged." And therefore, my lords, we insist that he may not enquire into those matters which we have not charged.

Com. Serj. I don't know whether I may be at liberty to add, that I humbly apprehend, that what the gentlemen of the House of Commons now insist upon, is contradicting your lordships' resolution already taken.

Then the Managers and Counsel were ordered to withdraw, and being afterwards called in again, and returned,

L. C. J. *King.* Mr. Serj. Probyn, the Lords have resolved, that the counsel for the earl of Macclesfield be not permitted to give evidence touching sale of the office of the Cursitors, for that no evidence hath been given in relation thereto by the Managers for the House of Commons.

Serj. *Probyn.* Then if it be your lordships' pleasure, we beg leave to call one witness more in opposition to the evidence given by Mr. Thomas Bennet, in relation to a sum of money paid by him upon the surrender of his office of Clerk of the Custodies; he gave your lordships an account that he had paid the sum of 64*l.* (besides the sum of 105*l.* which he at first agreed to give the great seal) upon his surrender of that office. Now, my lords, we shall shew your lordships, that no part of that sum of 64*l.* was really paid to the great seal, as Mr. Bennet seems to insinuate, but was all laid out in the fees and expences of passing his

patent through the several offices that are proper upon that occasion. And to this end we desire that Mr. Tench may be called.

Mr. Tench sworn.

Serj. *Probyn.* My lords, we desire Mr. Tench may inform your lordships, if he was employed in taking out the patent for Mr. Thomas Bennet, upon his surrender of the Clerk of the Cuttodies?

Tench. My lords, I was employed by Mr. Thomas Bennet to sue out the patent, and I paid the fees of every office of passing the patent, which comes to between 60 and 70*l.*

Serj. *Probyn.* We desire he may tell us what officer he is?

Tench. I am Clerk of the Patents to the attorney-general, and Deputy Clerk of the Patents in Chancery.

Com. Serj. I desire he may be asked, what part of those fees are paid to the great seal?

Tench. There is a dividend of the money arising from the patents, of this 1*l.* 8*s.* 4*d.* and 3*s.* went to the great seal.

Com. Serj. I desire he may be asked, whether any more came to the great seal out of the 64*l.* than 1*l.* 11*s.* 4*d.*?

Tench. I don't know that there is any more of the dividend of the patent. The rest went amongst others for their several fees at the several offices.

Com. Serj. I won't trouble your lordships to ask to whom the rest of the money belongs, but whether the remainder is paid over to other offices?

Tench. I don't know that any thing is paid to the great seal, upon passing the patent office, but the dividend of 1*l.* 11*s.* 4*d.*

Com. Serj. I desire he may inform your lordships, whether the remainder is paid to other offices?

Tench. Yes, to other offices, to the Hanaper Office, the Secretary's Office, the Signet and Privy Seal.

Serj. *Probyn.* My lords, we shall trouble your lordships with no farther evidence on this Article: but beg your lordships' favour to begin our evidence on the 5th, and other Articles.

Mr. *Sandys.* My lords, I desire he may be asked, where he found the warrant for passing the patent at that time?

Tench. I had the warrant from the secretary's office.

Mr. *Sandys.* I desire he may be asked, if he knows how it came there, and by whose direction; if he knows who procured it?

Tench. My lords, I drew a petition by Mr. Bennet's direction, to the secretary of state; upon that the petition was referred to the attorney-general, and upon his report, there was a warrant. I know of no other proceedings relating to it.

Mr. *Sandys.* My lords, I desire he may be asked, at whose instance he drew up that petition?

Tench. I drew it up at Mr. Thomas Bennet's request.

Mr. *Sandys.* To what purpose was that petition?

Tench. The petition recited that the patent was granted to his brother, and that upon his brother's surrendering, it might be granted to him.

Mr. *Sandys.* It is the last petition we desire to be informed of, what the purport of that was; not the petition of Mr. John Bennet, when he surrendered to Mr. Thomas Bennet, but the petition of Mr. Thomas Bennet, when he surrendered to Mr. Hamersley?

Tench. It was a petition reciting the grant to Mr. Thomas Bennet, and that he might resign to Mr. Hamersley's use, who was a person well affected to his majesty and the government.

Serj. *Probyn.* My lords, we now proceed to the other Articles, which relate to the presents made by the Masters in Chancery to the earl of Macclesfield.

Upon this the House adjourned to the next morning ten o'clock.

The Sixth Day.

Thursday, May 13.

The Lords being seated in their House, and the two Proclamations being made as on the former days.

L. C. J. *King.* Mr. Serj. Probyn, you may go on with your evidence.

Serj. *Probyn.* My lords, we beg leave to lay before your lordships some instances where, upon former admissions of Masters in Chancery, sums of money have from time to time been taken by the great seal. We desire Mr. Meller may be called again. [Accordingly Mr. Meller appeared.]

Serj. *Probyn.* We desire Mr. Meller may be asked, whether he knows of any sum of money paid to the great seal upon the admission of a Master in Chancery, and what sum?

Meller. My lords, I humbly apprehend, that the subjects of Great Britain are not compellable in any case to give an answer to any matter that may be to their prejudice. I speak it with the greatest submission to your lordships. For my part, I am very unwilling to do any thing that may any ways lessen the security of the subject, therefore I humbly hope your lordships will not compel me to give an answer to any question of this nature. I humbly submit it to your lordships' judgment.

E. of *Macc.* My lords, the question he is asked is a general question, whether he knows of any money paid to the great seal by any Master in Chancery upon his admission? whether he knows or doth not know it?

Serj. *Pengelly.* My lords, we beg leave to acquaint the House of the circumstances of Mr. Meller, from whence the objection rises.

He was formerly a Master, but before the late act of parliament he quitted that office, and hath no indemnification, as the present Masters have by that act. Therefore, as I apprehend, his objection is, that he can't give an answer to this question, without subjecting himself to a penalty, and accusing himself of an offence against the law.

Mr. *Lutwyche.* This general question tends to make him accuse himself, and subject himself to a penalty.

E. of *Macc.* My lords, I would gladly know whether these gentlemen object to this question or not? If they object themselves to it, they have a right so to do, and to offer their reasons, and they must be left to your lordships' judgment. But they have no right to instruct a witness.

Mr. *Lutwyche.* I never endeavoured to instruct any witness. It is very well known I never attempted any such thing; and that noble lord knows it. I am now here not as counsel, but as one of the Managers for the House of Commons, and by their command, and so have more reason to take notice of this reflection. We do not instruct witnesses, this is no such thing. It is an objection which we have a right to make. We have done it already, and have had your lordships' determination upon it. It is not so very long ago, but the noble lord may remember this very question was directly asked of Mr. Bennet, and then refused; the next day asked again by a side-wind, whether he knew any, and what money had been given for the place? and rejected by your lordships; and then a question was asked, how much he knew the place sold for? And your lordships likewise refused that: here now is a question asked of a man that hath been a Master in Chancery, and not indemnified by the last act, whether in effect he paid any money for his office? Your lordships thought this induced a penalty, because you thought it necessary to pass an act of parliament to indemnify the present Masters; but it is well known it doth not extend to those who were Masters before; and therefore, as there is a penalty annexed to it, he ought not to answer this question. Besides, for the sake of our proceedings, it ought not to be answered, and we have a right thus to interpose, that when your lordships have refused the same thing in another man, the same is not to be insisted upon again.

Serj. *Pengelly.* My lords, it is the duty of the Managers to take notice of the behaviour of the lord impeached. Whether he apprehends that he hath a right to controul the Managers in this House, and whether that arises from the seat he enjoys, your lordships will consider the consequences of this behaviour. When the first day we were told, that we were working up the witnesses, and now that we are instructing them, whence could this lord have this imagination but from his own former practice?

E. of *Macc.* My lords, as to that gentleman that thought himself reflected upon, he greatly mistakes me. I did not intend to reflect upon him as going to instruct the witness in his evidence; I believe him as far from it as any man in England. I know him to be a person of too much honour; and I had not the least thought when I spoke it, of his instructing a witness in that sense. But here a witness is making some difficulty in answering a question, and I thought that that gentleman who spoke first, was stating that which made the witness's objection; which I apprehended did not belong to the Managers to do. That is what I meant by instructing. The question that is asked is, whether he hath known of any money given to the great seal, upon an admission of a Master in Chancery? Say they, he was a Master in Chancery himself, therefore it may include his giving money upon his being admitted: but be that so, he may know of other persons besides himself that gave money. My question therefore is general, whether he knows of any money given to the great seal on admission of a Master in Chancery? The question your lordships resolved was as to Mr. Bennet himself, and confined to his single office; and had I asked Mr. Meller what he had given on his admission to his own office, it had been another matter, and within your lordships' resolution. But the question that is now asked, includes what he knows hath been given by other Masters; therefore he may give an answer without charging himself. If he answers that he doth not know of any money given by any other Master except himself; then it will come to the question the Managers would bring it to. In the mean time give me leave to say, that those gentlemen, by being Managers for the House of Commons, have not a right of treating persons in a different manner than what they should do if they were not Managers. That that gentleman should say, that what I spoke about instructing of witnesses, ariseth from a practice of my own, is a language unbecoming the dignity of your lordships' bar. Is this a way of treating mankind? Is this a fit method of carrying on a prosecution? Is this decent speaking before so august a judicature as this? What I said of instructing a witness imported no faulty way of instruction.—(After a short pause.)—I have used a great deal of preparation not to be disturbed at any expressions that fall upon this occasion. It is a faulty way of instructing a witness, to tell him what he shall say; but to tell him he hath a legal objection to a question that is asked, I know no crime in that. My lords, I beg pardon for taking so much notice of this matter; but I insist upon an answer to this question, whether he knows of any money given to the great seal, on an admission of a Master in Chancery? He may answer affirmatively, without at all affecting himself; and I submit, whether he ought not to do it.

Mr. *Plummer.* My lords, if the counsel for the noble lord have done, I beg leave to reply. The noble lord says, that this gentleman may possibly answer, and not accuse himself. But if by the answer he may accuse himself, it is a

reason why he should not answer. The method proposed, that he may say he doth not know of any but himself, is accusing himself. As for the other point about instructing witnesses, it is not our witness, but his own witness, who refuses to answer.

Mr. Onslow. The Managers cannot but observe the indecent behaviour of this lord, and his unworthy manner of treating us. What we say here, we are ready to say any where. We do not think the lord at the bar should be directing the Managers, as if he sat in his place as judge: if we do any thing unbecoming, we are subject to your lordships' judgment. We appear not here as common prosecutors, and are not to be treated as common counsel by him, as he would have treated counsel in another place. We are here advocates for all the Commons of Great Britain, to demand justice against this Earl; and submit it to your lordships, whether he is to treat us in this unbecoming manner? As for the question, the very reason he now gives for asking it, is the same that was given by him for examining Mr. Benet, and your lordships then over-ruled it. It is only by a side-wind asking a question of a witness, the answer whereto will unavoidably charge him with a crime: he cannot answer without charging himself. This lord hath laid a trap for the witness to accuse himself. He says he may answer that he knows nothing of any money given by any Master but himself; which is directly saying that he himself hath given money. We hope, therefore, this question shall not be asked; and we insist upon the objection.

Mr. Palmer. In duty to the House of Commons, I think myself obliged to take notice of the strange behaviour of this lord in this instance. According to your lordships' own rule, though he sits within the bar, yet he is not a judge; and therefore I must beg for myself, in the names of the Managers, and in the names of all the Commons of Great Britain, that no such language or behaviour be again used; if it should, we cannot bear it, but must retire.

E. of Macc. My lords, I desire the general question that I have proposed may be asked; I do not know what is your lordships' pleasure; I think I have a right to have it answered.

Mr. Plumner. I object to the lord's going on. The lord hath answered; we have replied; and I insist upon it he hath not a right to speak any more.

Duke of Argyle. I hope they will withdraw. [Ordered to withdraw.]

Then the Managers and Counsel withdrew, and being called in again, and returned,

Lord Chief Justice King. Mr. Serj. Probyn, the question proposed by the noble Earl to Mr. Meller was, whether he knew of any money paid to the great seal by any Master on his admission; and Mr. Meller insisting that he had been a late Master in Chancery, and was not obliged to answer the question, because it might tend to accuse himself; the Lords, upon debate, are of opinion, that he is not bound to answer that question.

Serj. Probyn. My lords, then we desire he may be asked, whether he knows of any sum of money paid by any other person, except himself, upon the admission of any Master?

Com. Serj. I would not presume to ask any question that is improper, I understand your lordships' resolution to be, that we are not to ask the general question of Mr. Meller, because it might affect himself; this question, we think, will not; whether he knows of any sum of money given upon the admission of any other Master?

Serj. Pengelly. My lords, we submit it, whether this question differs at all in consequence; though it be not in the same words, yet it is to the same effect: it is, in other words, to ask the same question over again. We hope they will not give your lordships this trouble.

Mr. Lutwyche. My lords, the question implies that he gave money himself.

Lord Lechmere. If the counsel would explain themselves more particularly, name the Master, the person who received it, or any other particular fact; then it will appear whether that be a proper question.

Serj. Probyn. My lords, we humbly apprehend, that we are at liberty to ask this question in the form proposed, otherwise we shall in a great measure be precluded from the just defence of the noble Earl. We could not presume to ask these witnesses beforehand, who were the persons that gave, or the particular persons that received, but as these persons have been in the office, and must know the nature of admitting the Masters in Chancery; we hope they will explain it in their evidence, and name the particular persons, who either gave, or received money upon that occasion. We are not proper to ask more particularly.

Com. Serj. My lords, I shall be very loth to give any distaste to this honourable House; therefore I beg leave to know, whether or no we have liberty to ask this question, and whether your lordships' resolution extends to it? I humbly take it, we are at liberty to ask the question, and the witness is not obliged to answer, if he apprehends that as the question is formed, he cannot answer without an inconvenience to himself. I would not willingly ask any question that I thought the House would think improper.

Lord Trevor. If the noble lord insists upon this question, it is proper that he should name some person, concerning whom he would ask; otherwise, it is indirectly to overthrow your lordships' resolution.

E. of Macc. My lords, I am very unfortunate in this matter. I would ask him the question in such a manner, as should not carry any the least imputation on him: but if I should first name one Master, and afterwards another, in so great a number of Masters it would be tedious; I only ask in short, what he knows of any money taken by the great seal for, or on the admission of other Masters? I don't ask

him concerning himself, but only concerning other Masters; whether he knows any thing of the transactions of other Masters' admission besides his own? I hope your lordships will think this may be asked, with this explanation and declaration, that it don't extend to any thing relating to himself; but only whether he knows any thing concerning any money paid by any other persons; and to name them particularly.

Lord Chief Just. *King.* You hear the question.

Meller. Is it your lordships' pleasure that I should answer to the question as it is now formed? My lords, I don't know or remember, that ever I had a discourse with any Master about what he gave, or what he was to give, for any place; except I have heard Dr. Eddisbury say——

Mr. *Lutwyche.* My lords, we object to this as not being evidence, but only hearsay.

Meller. Except Dr. Eddisbury, I don't know one indeed.

Serj. *Probyn.* My lords, we desire that Mr. Lovibond may be called.

Mr. *Lovibond* called.

Serj. *Probyn.* My lords, we hope that Mr. Lovibond, being one of the present Masters, and consequently within the indemnity of the late act of parliament, may be examined, as to what happened in his case: And we desire that he may be asked, what sum of money was paid to the great-seal, on his being admitted a Master in Chancery?

Lovibond. My lords, as to that transaction, it is many years ago, above twelve years ago, I will recollect what I know of it to the best of my remembrance. My lords, I never had any treaty in that affair with the great seal, nor with any officer belonging to the great seal; nor did I employ any body in it. But there was an acquaintance of mine, a Master in Chancery, since deceased, who apprehending it to be for my service, without my knowledge transacted it.

Serj. *Probyn.* Who was it?

Lovibond. Mr. Browning; he came to me, and told me, I have settled the whole matter, you must be sworn in this night, and you must send to Mr. Cottingham or Mr. Appleby, then officers under the great seal, 700*l.* in money or Bank bills. I did send it that night, and was then sworn in.

Serj. *Pengelly.* My lords, I desire he may be particular as to the time: It is necessary he should be certain.

Lovibond. Mr. Browning said, he had settled it with the great seal, that I should be sworn in that night; my lord Harcourt was then Chancellor.

Mr. *Strange.* My lords, I desire he may be asked, whether he was admitted upon a death or a surrender?

Lovibond. I was admitted upon a surrender.

Mr. *Strange.* By whom?

Lovibond. Mr. Pitt.

E. of *Strafford.* Before the witness goes, I desire to ask him how much he gave to Mr. Pitt upon his surrendering?

Lovibond. It was 2,000*l.*

L. *Harcourt.* My lords, if the gentleman is not gone, I desire to ask him a question or two.

Mr. *Lovibond* called again.

L. *Harcourt.* My lords, I desire he may be asked, whether he was worth so much money as to pay 2,700*l.* of his own money at that time?

Lovibond. Yes, my lords, and much more.

L. *Harcourt.* I desire he may be asked, whether he paid it out of his own money, or out of the suitors' money?

Lovibond. I paid it out of my own money.

L. *Harcourt.* I desire he may be asked, whether Mr. Pitt, at the time of his admission, transferred, and actually delivered over to him all the money of the suitors that then was in his hands?

Lovibond. Mr. Pitt, to the best of my belief, delivered over every thing that was in his hands to me.

Serj. *Probyn.* My lords, we desire that Mr. Cottingham may be called again.

Mr. *Cottingham* called.

Serj. *Probyn.* My lords, we desire that Mr. Cottingham may be asked, whether he knows any thing of any transaction relating to the payment of any sum of money on the admission of Mr. Holford?

Cottingham. My lords, if I remember right there was 800*l.* paid.

Serj. *Probyn.* How long ago?

Cottingham. It is several years ago: There was 800*l.* or 800 guineas given or paid on his admission, several years ago.

Serj. *Probyn.* To whom?

Cottingham. My lords, sir Richard Holford desired me to recommend his son to the noble lord that then had the great seal.

Serj. *Probyn.* Who was it?

Cottingham. The lord Harcourt. Sir Richard Holford was my old friend and acquaintance: I accordingly did recommend him; Mr. Holford came under a good character to my lord Harcourt; my lord agreed to admit him; but he first desired to know, whether he had any estate in possession sufficient to answer the suitors' money? Upon my saying this to sir Richard Holford, sir Richard said he had none in possession, but agreed to settle an estate upon his son; and, to the best of my remembrance, it was either 800*l.* or 800 guineas that were given on his admission, for the use of my lord Harcourt.

L. *Lechmere.* To whom was it paid?

Cottingham. I can't say whether it was paid to me, or to Mr. Appleby.

Dr. *Sayer.* Who carried the proposal?

Cottingham. I carried the proposal. Sir Richard Holford, as I told you, being my friend and acquaintance, desired me to do it. Accordingly I transacted the whole matter; being an upper secretary it was left to me.

Mr. *Lutwyche.* My lords, I desire to ask this witness one question as to this matter: He says, that Mr. Holford was recommended as a man of good character; I desire to know, whether he hath not ever since maintained that good character?

Cottingham. Yes; he hath made an admirable good Master as ever I knew; and hath executed his office with as much honour and integrity as any Master. I never heard any complaint against him in my life.

Mr. *Lutwyche.* Can you recollect who paid the money, Mr. Holford, or sir Rd. Holford?

Cottingham. Sir Richard, I believe; I can't recollect.—He was a young man; I presume sir Richard Holford, his father, paid the money.

Com. Serj. I desire he may inform your lordships, whether it was on a death or surrender?

Cottingham. As I told you before it was on a surrender; upon the surrender of sir Robert Legard, if I remember right.

L. *Harcourt.* My lords, if that witness is not gone, and the counsel for the Earl, and the Managers for the House of Commons have done with him, I desire to ask him, if he can tell whether any account was taken of the suitors' money by his predecessor? and whether all the suitors' money was delivered up by sir Robert Legard to Mr. Holford at the time of his admission?

Cottingham. My lords, I believe it was. But I was not privy to that, I did not transact that matter; I have heard that an account was made up.

E. of *Strafford.* I would not ask the same question twice; I think nobody hath asked it already; I desire to know, if he knows, of his own knowledge, what was given to sir Robert Legard for his surrender?

Cottingham. I know nothing of it.

L. *Harcourt.* My lords, if I might have your lordships' indulgence, in order to have this matter a little farther explained, I desire Mr. Holford himself, or Mr. Appleby, or both of them, may be called.

Mr. *Holford* called.

L. *Harcourt.* I desire to know of Mr. Holford, whether, at the time of his admission, when he was sworn Master, sir Robert Legard transferred and delivered over to him all the effects of the suitors?

Holford. He did, my lords.

L. *Harcourt.* I desire to ask him, whether the money, that it was said he presented to the great seal on his admission, was his father's money, or his money, or whether it was out of the suitors' money?

Holford. My father paid it before any thing was delivered to me.

E. of *Strafford.* I desire to ask the gentleman this question, what money he paid to sir Robert Legard on his admission to his place?

Holford. My lords, I did not give it myself; I can tell your lordships what I believe was given, and I have some reason to think I know the truth; I belive it was 2,000*l.*

Serj. *Probyn.* My lords, I desire he may be asked, How long it was after his admission before these accompts and effects were delivered over to him?

Holford. My lords, when I came to my lord Harcourt to be sworn in, my lord Harcourt had an account delivered there of what was in sir Robert Legard's hands. My lord Harcourt took the paper in his hand, and asked me, If I was satisfied to be charged with that? I told him, Yes. I was then sworn in; and a day or two after, the things were delivered over to me by sir Robert Legard.

Mr. *John Bennet* called.

Serj. *Probyn.* I desire he may be asked, what money was paid by him to the great seal on his admission?

J. Bennet. I gave Mr. Woodford, the secretary of the great seal at that time, 500*l.* I don't know that it was given to the great seal; I gave it with that design.

Serj. *Probyn.* When was it?

J. Bennet. About two or three days before I was admitted.

Serj. *Probyn.* When?

J. Bennet. It was in March, 1716.

Serj. *Probyn.* Who was Chancellor then?

J. Bennet. My lord Cowper was Chancellor.

Serj. *Probyn.* Whether was it paid before his admission?

J. Bennet. It was paid before my admission.

Com. Serj. I desire he would inform your lordships, whether he came in upon a surrender or a death?

J. Bennet. It was upon a surrender.

L. C. J. *King.* Upon the surrender of whom?

J. Bennet. Of Mr. Medlicot.

L. *Bathurst.* I desire he may be asked whether he paid it out of his own money.

J. Bennet. It was my own money.

L. *Bathurst.* I desire he may be asked, whether he had any account of what was in the former Master's hands, and when delivered over to him.

J. Bennet. The effects were all delivered over to me in a week's time, except some very small matters.

L. *Bathurst.* What was the money that was given to your predecessor?—*J. Bennet.* 3,000*l.*

L. *Bathurst.* Was that paid out of the suitors' money, or out of your own?

J. Bennet. It was paid out of my own money.

Sir *Thomas Gery* called.

Com. Serj. My lords, the question that I shall propose to sir Thomas Gery, is under the apprehension that I mentioned before, that we are at liberty within the meaning of your lordships' resolution to propose it, he being at liberty to answer, or not to answer, if the question carry any imputation upon him. I would not ask a question that is improper; I desire that sir Thomas Gery will inform your lordships what he knows has been paid to the great seal upon the admission of a Master in Chancery?

Sir *T. Gery.* My lords, I never did know, of

my own knowledge, of any sum paid to the hands of any Lord Chancellor whatsoever.

Serj. *Probyn.* I desire he may answer the question, Whether he hath known any sum of money paid to the use of the great seal, or of my Lord Keeper or Lord Chancellor, upon the admission of any Master?

Sir *T. Gery.* I can't tell how that may affect me; I refer that to your lordships. I think I am not bound to answer.

E. of *Macc.* I think he said, he doth not know of any money paid to a Lord Chancellor. Doth he intend to include Lord Keeper?

Sir *T. Gery.* Neither Lord Keeper nor Lord Chancellor.

E. of *Macc.* It may be, not into the hands of a Lord Chancellor or Lord Keeper. I desire he may be asked, if he hath not known it paid to the use of the Lord Chancellor or Lord Keeper?

Sir *T. Gery.* That, I hope, I shall not be obliged to answer. I submit that to your lordships.

Serj. *Probyn.* If the gentleman is not pleased to give a more particular answer, we must submit.

L. *Harcourt.* I desire to ask this witness one question, which will not draw him into any inconvenience, whether he was ever required in any Lord-Chancellor's or Lord Keeper's time, to make up an account of the suitors' money; and whether ever he did so?

Sir *T. Gery.* Yes, I did it three several times; once in my lord Cowper's time; and when the noble lord that asks me the question was in that place, I did the like; and I did it again when my lord Cowper was Chancellor. At all those times I gave a particular account of the sums of money in my hands, the time it came in, and how it was disposed of, and the distinct securities, in distinct columns.

E. of *Strafford.* He says twice in my lord Cowper's time: I take it, he means both the times that my lord Cowper was Chancellor?

Sir *T. Gery.* Yes, my lords; and the same in my lord Harcourt's time.

L. *Harcourt.* I desire he may be asked, whether all the rest of the Masters did so as well as himself?

Sir *T. Gery.* I believe they did; I have heard them all declare so.

Serj. *Probyn.* My lords, we have now called all the living witnesses that are willing or compellable to speak to this Article, we have a great many other witnesses that would speak to this, as a constant usage time out of mind: but we apprehend it to be against your lordships' resolution to call and examine any witnesses but to what they can speak of their own knowledge, and them we have produced. We shall now beg leave to proceed to prove, that the offices in the Court of Chancery are increased in their value beyond what they were formerly, that not only these, but all other offices, as they have increased in value, have increased in the price; all offices have risen in value, and the price given in this instance, is no more than in proportion to the prices given for others.

Com. Serj. We apprehend, my lords, it is so notorious that all sorts of offices have risen in their value, that a very small evidence will be sufficient. We have a great many witnesses to this purpose, we will only call some few. We desire Mr. Steele may be called.

Mr. *Steele* sworn.

Serj. *Pengelly.* My lords, we desire to know, before they proceed, Whether they design to ask as to those offices your lordships gave them direction last night not to ask to. Your lordships gave them directions not to ask any questions but to the particular offices mentioned in the Articles; this is a piece of dexterity to elude that resolution.

Mr. *Lutwyche.* My lords, I submit it to your lordships, whether this attempt is not directly the same as that which was over-ruled yesterday. If the witness is to give an account whether the price of the cursitor's office, or other offices have risen, they must then shew that they were sold; which is the very question your lordships determined they should not ask to.

Serj. *Probyn.* My lords, we were then directed by your lordships not to prove any money was paid to the great seal for any other offices, but those particularly mentioned in the Articles. We don't pretend now to ask as to the payment of money to the great seal, but only whether offices in general have not much advanced in their prices?

Serj. *Pengelly.* My lords, it is extraordinary usage to tell us of offices in general: there are private offices, there are offices in other Courts in Westminster-hall. We apprehend your lordships' determination is so strong against what is now attempted, that they would not urge it, unless they thought that the Managers had forgot every thing that happened.

Com. Serj. My lords, the question we ask is, as to employments in general, offices in the law, or any other offices; we desire to inform your lordships in general, that the value of all employments, not of the law only, hath risen.

E. of *Macclesfield.* I will inform your lordships how the matter is. I believe this gentleman is not intended to be asked what offices belonging to the great seal are worth; but what difference there is in the value of other offices, to what they were heretofore? particularly, how the prices of the seats in the six clerks office are increased; that they were once at such a rate, and what they are now? That is the matter as I take it.

Mr. *Lutwyche.* My lords, I apprehend the direction was given to the noble lord, not to ask concerning the sale of any office but what was in the Articles, and the Managers had given evidence to. Now to ask the difference or increase of the prices of a clerk in Chancery's place, is, we apprehend, to ask to the very thing that your lordships have over-ruled already.

E. of *Macclesfield.* My lords, this is not like the cursitor's office, which is in the disposition

of the great seal; your lordships' Resolution was, that the witnesses were not to answer as to their giving money to the great seal. The evidence we are now upon, is an enquiry that relates not to any money given to the great seal, but what those persons paid to one another for an office that doth not belong to the great seal.

Mr. *Onslow*. At the end of your lordships' resolution yesterday, the reason given why they ought not to be let into the examination as to the offices then in question, was, because no evidence had been given thereto by the Managers, and it was not charged nor mentioned in the Articles, although the noble lord did insist that he should be let into that examination, because in the preamble of his Answer, he had taken notice of those offices. This case is stronger, because the offices now desired to be examined into, are neither in the Articles nor Answer, nor hath any evidence been given to them; and therefore we hope he shall not be let into this examination.

Com. Serj. We humbly hope your lordships will permit us to enquire, whether the business of those offices in the Court of Chancery is not greatly increased, and whether the value of the offices be not increased with it?

Serj. *Probyn*. Notwithstanding your lordships' direction in the former question, we submit whether we may not be permitted to ask this question, whether the offices in the Court of Chancery are not increased in value much beyond what they were seven years ago?

Serj. *Pengelly*. My lords, that is the very question that we object to.

E. of *Macclesfield*. What I before offered was, that there had been a usage to make presents to the great seal; I apprehend your lordships over-ruled it as to the Cursitor's office, because there was no need of an excuse as to that office, as there is no mention made of it in the Articles, nor any proof offered against me. This is not of any payment to the great seal, but goes by way of excuse as to the sums, to shew the increase or difference of the prices of offices in general. It is notorious that money now carries a less interest, and that the price of all offices is increased. I don't know whether the gentlemen will deny it: if they do not, I will not trouble your lordships any farther about it.

Serj. *Pengelly*. We have no occasion either to confess or deny any thing that is not before your lordships in judgment. Therefore, if they expect any answer, we give this, that it is not before your lordships in judgment.

Mr. *Lutwyche*. I apprehend the reason of your lordships' resolution yesterday was, That there was no charge in the Articles concerning those offices; the same reason equally holds to what they are asking now in relation to clerks in Chancery.

Mr. *Plummer*. My lords, I should be extreme sorry to make any objection to any evidence that is material: but, if he is pleased to examine this gentleman how far by the increase of business the value of any office is risen, that must be of the annual legal value, and not according to the liberties he left to his Masters.

Serj. *Probyn*. I desire he may be asked, whether he doth not know that the prices of offices are greater now than they were formerly?

Serj. *Pengelly*. My lords, we don't understand they have any such permission to ask that question. To repeat the same thing over and over again, we apprehend they think we are asleep.

E. of *Macclesfield*. Your lordships seem not to be of opinion that this question should be asked; therefore to save your lordships' time, I will wave the question.

Mr. *Goldesbrough* sworn.

Serj. *Probyn*. We will proceed, in the next place, in confirmation of that part of the Answer to this Article, that two sums of money, mentioned to be paid to my lord Macclesfield by Mr. Kynaston and Mr. Bennet, were both paid back into the Court of Chancery. We desire Mr. Goldesbrough may be asked, Whether he knows of the two sums of 1,500 guineas, and 1,500 guineas, that were paid by my lord Macclesfield into the Court of Chancery.

Lord *Lechmere*. My lords, I beg pardon. I think the question that the noble Earl hath waved, if I mistook not, was about the rise and increase of value of the offices in Chancery. Now, notwithstanding the noble lord hath waved it, yet it may be proper for your lordships' consideration, whether he should not have liberty to ask it, if he thinks fit?

E. of *Strafford*. I think what the noble lord hath said is considerable, and it may be proper for our judgment.

Lord Visc. *Townshend*. I move that they may withdraw.

Lord *Lechmere*. It may be proper to have the question repeated again. I therefore desire, that the counsel for the Earl would repeat the question again that they would have asked of Mr. Steele.

Serj. *Probyn*. My lords, the question is, whether the price of offices in the Court of Chancery, and in the Six Clerks' office particularly, are increased now more than anciently they were?

Thereupon the Managers and Counsel withdrew, and being returned,

L. C. J. *King*. Mr. Serjeant Probyn, the Lords have considered the question on which you withdrew. Their lordships are of opinion that you are at liberty to ask the question, whether the price of offices in the Court of Chancery, and in the Six Clerks' office particularly, be increased now more than heretofore they were?

Steele. My lords, I came to be a clerk in the Chancery Office in the year 1687. I served my clerkship in the office; and in that year and for several years afterwards, I know that waiting clerks' places were bought at 50 guineas

or less; and after I was out of my clerkship, I was offered a waiting clerk's place in the office for 50 guineas. They are not sworn, nor have power to take a clerk; and since that time I have known them sold for 3, 4, and 500*l.* My master was a sworn clerk, and he sold his own clerk's place for 230*l.* It was a clerk at the seat; and by the custom of the office, he that hath one clerk cannot take another till the first clerk be provided for; but I having a proposal to go into a seat of greater business, that induced me to give a note to the gentleman that bought the seat, that I would not be an incumbrance on the seat, otherwise he would not have given so much. Since that time I have known a sworn clerk's place sold for 800*l.* Particularly I transacted a sale upon a brother-in-law's account; I contracted for 500*l.* and then there was a clerk upon the seat that had not served half his clerkship out.

Serj. *Probyn.* What sum of money had they upon taking a clerk at that time, and what now?

Steele. I did treat in order to put my brother-in-law clerk to one Mr. Atkinson, in the office.

Serj. *Probyn.* What time was that?

Steele. To the best of my remembrance it was in 1703, or 1704, and he had 100 guineas. Since that time my brother-in-law, while he was there, had 300*l.* or 300 guineas with a clerk.

Com. Serj. I desire he may explain to your lordships what he means by a clerk being an incumbrance to a seat?

Steele. By the custom of the office, he that is put a clerk, must be provided for before his master can take another. The master so taking him, cannot take another clerk, till he is provided for by a sworn clerk's place, or a waiting clerk's place.

Mr. *Lutwyche.* If the counsel have done, I desire to ask one question; that is, the gentleman says, he came into the office in the year 1687. I desire to know how many clerks there were at that time?

Steele. There were at that time but 60 sworn clerks; there was an addition made, to the best of my remembrance, in my lord Jefferys's time; sir John Trevor was then Master of the Rolls, I think there was an addition of 20.

Mr. *Lutwyche.* I desire to know whether they are not reduced from 90 to 60 again.

Steele. They are not at present yet reduced.

Mr. *Lutwyche.* Whether they are not intended to be reduced?

Steele. If any one dies without surrendering his office, they don't fill up the place of that person with another; but any one may surrender.

Mr. *Lutwyche.* How many are there now?

Steele. I have been told there are about 12 or 13 less than 90: they are to be reduced from 90 till they come to the ancient number of 60; and they are reduced as they die without surrendering.

Mr. *Lutwyche.* We don't expect you to give an exact account; how many may there be?

Steele. I can't take upon me to say how many; but as I have been informed, I believe there are about 16 or 17 above the 60 remaining: I may be mistaken, I am not certain; but there are several gentlemen here who can give an exact account.

Mr. *Lutwyche.* I desire to know whether the offices are not a great deal better, by there being fewer of them?

Steele. Certainly, I believe that is pretty natural; the fewer the offices are the better; but the offices are not so good as they were when I came clerk. They have reduced several profits belonging to them since I came out of the office, by the act of parliament made for the amendment of the law.

Mr. *Lutwyche.* You say they are sold for more than formerly they sold for; I desire to know whether some of those clerks, whose predecessors have had good business belonging to the office, have not made that seat sell better?

Steele. Certainly it doth; if the person surrendering had good business, that seat will sell for more than a seat of less business.

Com. Serj. I desire that he will inform your lordships, when it was in point of time that these offices sold at so low a rate?

Steele. It was in the year 1694 that the gentleman to whom I was clerk surrendered his seat.

Com. Serj. And when was it you knew 50 guineas paid for the place of a waiting clerk?

Steele. The 50 guineas I speak of for a waiting clerk's place, was in the year 1687, or thereabouts.

Com. Serj. Whether was that before the increase of the additional number of clerks?

Steele. Much about the time that the additional number of clerks was added.

Com. Serj. I desire he would inform your lordships, whether the prices began to rise before any reduction was made?

Steele. Yes; before the reducing of them.

Serj. *Probyn.* When was the reduction of them made?

Steele. I can't tell the exact time. There was an order made, that they should not be filled up as they died, without surrender.

Serj. *Probyn.* I desire he may be asked, whether there was not a difference of price between those seats which were full or empty of business, or whether they were all at a par?

Steele. The price always varied, as there was much or little business.

Serj. *Probyn.* But every seat, whether great or less, had a rise in proportion?

Steele. Yes.

Mr. *Cary.* I desire he may be asked, whether there hath not been an act of parliament since the time he mentions, which hath been beneficial to the 60 clerks?

Steele. There was an act of parliament, called, An Act for the Amendment of the Law; by which the 60 clerks had the term fees in-

stead of the tenour bill, which was a considerable profit; and to make up that to them, the fees of the small writs were given to them, and the term fees; but in my apprehension, the tenour bill was a greater advantage than those fees that have been given in lieu of it.

Com. Serj. That worthy gentleman's question hath occasioned me to desire, that he would inform your lordships, whether, upon the whole of the act, the Six Clerks' offices are better or worse?

Steele. In my opinion, they were better before the act, than they are now.

Serj. *Probyn.* My lords, we have more witnesses to this purpose; but we apprehend that Mr. Steele hath spoken so fully to it, that we shall not trouble your lordships with any others, as to this matter. The next witness which we shall beg leave to call, is in relation to the two sums of 1,575*l.* that were paid into the Court of Chancery by the noble earl, for which we did call Mr. Goldesbrough.

Dr. *Sayer.* Before your lordships enter into an examination of this fact, I will only beg leave to take notice as to the time of this repayment: the learned Managers were right in their observations, that it was after the vote for the Impeachment; but it was before the Articles were exhibited. This is mistaken in the Answer; but I am sure the honourable House of Commons will be so candid as to think it was a mistake only, and that it is impossible it could be with any view of deceiving the world, since both facts were upon record; the Earl was so very impatient to have his Answer in, that no delay might be charged upon him, that I assure your lordships the Answer was not settled till 3 or 4 o'clock in the morning of that day that it was delivered in. In such a hurry a mistake of this nature, I hope will not be taken amiss, nor be looked upon by the House as designed. My lords, I thought it my duty to observe this, before your lordships entered into this examination.

Mr. *Goldesbrough* called.

Com. Serj. There are two sums of money taken notice of to be given by Mr. Kynaston and Mr. Bennet to my lord Macclesfield, I desire you would inform my lords, whether those two sums were paid back again, and when, and in what manner?

Goldesbrough. My lords, the 23d of February last my lord Macclesfield came into Court, and deposited in Bank notes and money to the value of 3,000 guineas. The lords commissioners were pleased to direct the investing it in South Sea annuities, in the names of Mr. Holford and Mr. Lovibond, the two senior Masters of the Court, for the benefit of the suitors of the Court.

Com. Serj. I think, my lords, we need not ask whether Mr. Goldesbrough be the proper officer?

Lords. No, no.

Com. Serj. I would with submission ask another question of Mr. Goldesbrough; I would beg leave to inform your lordships what the question is. There hath been an examination on the part of the gentlemen of the House of Commons into the nature of these offices, and I hope it will not be improper, Mr. Goldesbrough being now at your lordships' bar, to ask him as to the manner of the money coming into the Masters' hands, whether it be by compulsion, or at the instance of the parties?

Serj. *Pengelly.* This must appear by the order. No money is paid in but by order.

Com. Serj. The orders are infinite; but Mr. Goldesbrough being the Register, may be properly asked, what the practice and usage of the Court is in this instance? It is usual to ask the officers of the Court, what the practice and usage of the Court is. If we should produce 20 orders, they might object that others are not so: and therefore I beg Mr. Goldesbrough, the proper officer, may inform your lordships what the practice of the Court is?

Goldesbrough. Upon decrees, when causes are heard, the counsel pray what decree is proper: where estates are to be sold, they order the money to be brought before the Master.

Mr. *Lutwyche.* My lords, I desire to ask one question; Mr. Goldesbrough is a very experienced officer of the Court, hath been a good while in the place, and probably may give your lordships some light into this matter. The question I would ask is, When he first knew the office, whether it was usual to direct the money to the Masters in the manner it hath of late been directed?

Goldesbrough. I can't say it was.

Mr. *Lutwyche.* The next question is, When the present Usher of the Rolls had given security, whether there were not some orders made by the late Lord Chancellor, as well as by the Masters of the Rolls, for payment of money to the Usher of the Rolls; that is, into Court?

Goldesbrough. Yes, there was.

Mr. *Lutwyche.* I desire him to explain the difference between paying the money into Court, and paying the money to a Master. What is understood by paying it into Court?

Goldesbrough. Paying it into Court, is paying it to the Usher.

Mr. *Lutwyche.* I desire to know, whether there were not some orders made, after Mr. Trevor, the present Usher, had given security, for payment of money to him?

Goldesbrough. Yes, there were.

Mr. *Lutwyche.* I desire to know, how soon after those orders were varied?

Goldesbrough. I can't remember when the orders were varied; as to those made before hearing, and for continuance of an injunction, I don't know they are altered yet.

Mr. *Lutwyche.* What I ask is, Whether he had any directions touching the varying of orders for the payment of money; any direction, I mean, from my lord Macclesfield to vary the order?

Goldesbrough. Money paid before hearing, was paid into Court; money paid upon the decree, was brought before the Master. I had

he is charged, and they have been displayed with the utmost force of eloquence, and in the most moving strains of commiseration and pity.

And I believe, my lords, every one that heard them have shared and gone along with the honourable Managers for the House of Commons, in the concern and indignation they have so justly shewn towards those who have been the authors and contrivers of them.

These, my lords, are subjects wherein the richest fancy may almost lose itself, and the poorest can never be at a loss for something to offer to move and affect the passions of mankind.

And the learned Managers for the honourable House of Commons, have adorned and set off their Charge against the noble Earl on this head, with so many beauties of expression, and so great a propriety and choice of language, to engage and win over all the passions of human nature to their side, that it will be difficult, if not impossible for us, who may seem to have undertaken an argument leading to disprove and reason against the force and truth of all these, to hope for success, but by shewing to your lordships, that the noble Earl entirely joins with the learned Managers in their just resentment and concern on this occasion, that he is deeply affected with the losses, the depredations and the havock, which has been made of the fortunes of the unhappy suitors of the Court of Chancery.

That he has long been endeavouring to put a stop to them; that at one time he has contributed his reason, his judgment, and his understanding, to find out effectual methods for the cure of them; at other times has made use of his power, his authority, and that majesty wherewith, as Lord Chancellor, he seems to be invested, to enforce and hasten the completing of them.

That he has convened the Masters, the Registers, and the several officers belonging to his Court, to consult, advise and assist, in finding out means to stop the growing evil; that he has assisted with his purse, has advanced considerable sums of money of his own, and when nothing would do, when the mischief appeared too big for his single endeavours to oppose, that he then at last presumed humbly to lay the whole before his majesty in council, as well for his majesty's assistance and direction, as to testify how much he had at heart the finding out a remedy for the cure of those overgrown diseases, this epidemical contagion, which was spreading through every part of the Court where he presided, and seemed to threaten destruction and ruin to the whole.

These, my lords, we humbly hope will prove the noble Earl not to have been an idle and unconcerned spectator at the tragedy that was acting around him; that he saw and felt the commotions it had raised, and was fully determined to put an end to them as speedily and effectually as he could.

But when, my lords, a stop was put immediately to his endeavours; when he was disarmed almost in the very beginning of his onset, and when the great seal, and therewith his power to proceed further, was taken from him, your lordships will not impute it to him, that he was forced to sit still, and leave it to others to effect what he had, so prosperously and happily, begun.

Your lordships, without question, will have already observed, that these fatal mischiefs did not spring up all at once, that they had long been growing, that the seeds of them had lain buried and concealed for a considerable time, and, that they hardly appeared at all, till they were grown too stubborn and obdurate, to yield to an easy cure.

Your lordships will likewise, no doubt, have observed, that however, in the strictest way of considering things, the Chancellor may possibly be thought to be answerable for them; yet, that they did not originally proceed from him, that he had not the immediate custody or ordering of the suitors' money or effects.

That the Masters in Chancery, who are no less than eleven in number, by the constitution of the Court, and the nature of their office, were necessarily to be entrusted with that part of the business thereof.

And when your lordships shall likewise be pleased to observe farther, that enough, and more than enough for the strongest constitution of body, and the greatest abilities both of mind and understanding, remained still for the Chancellor's own share, in the dispatch of the daily and necessary business of the Court where he presided, the innumerable avocations by his attendances on your lordships, on his majesty, and the council, and other services, which the duty of his high station required from him; your lordships, no doubt, will easily reflect, that he had but little leisure, suddenly, and immediately to go through so arduous, so difficult, and so tedious an undertaking, as the stating and settling of the Masters' accounts, for no less than almost a million of money, which has now appeared to be in their hands. And your lordships, we are persuaded, are no strangers to the many and almost insuperable difficulties which even at last have attended the prosecution of that affair, the great length of time it has taken up, the number and variety of meetings and consultations with persons of the greatest abilities and experience to go to the bottom of it, and whether even yet they have been able fully to effect it, or have fixed on such methods of enquiries as have laid open the whole scene, or will certainly prevent the like mischiefs for the time to come; these, my lords, we humbly apprehend, are considerations that will not be thought altogether unworthy of your lordships' notice in determining the guilt or innocence of this noble Earl of the crimes laid to his charge.

It must indeed be admitted that they have, for the present, taken away the money, effects, and securities of the suitors out of the Masters' hands, and so have prevented any loss for the time to come on their part.

But whether, my lords, they are even yet disposed of in such manner as fully to answer to the ends proposed, whether the ease and convenience of the suitors of the Court will appear to be more effectually provided for, than they were before, by the methods that have now been taken to dispose of their money and securities; these, my lords, I am afraid are questions more easily asked than answered.

But, my lords, all I would be understood to mean by this, is, and I mean nothing more by it, than that the settling and adjusting of the Masters accounts for such great sums of money, placed and disposed of in such variety of hands, so difficult to be thoroughly considered or understood; and so little to be depended on if they were understood; that this, my lords, was rather the work of persons at full leisure, of persons conversant in the nature and manner of accounts, that it was the work of variety of persons of different capacities and abilities, and so the taking of these accounts lately has abundantly verified and proved them to be.

And then, my lords, we humbly hope that the single endeavours of a Chancellor to the same end, by being unsuccessful, will not be made criminal, and that he will not be obliged, under the pain of an impeachment in parliament, to do what, with the greatest submission has never yet been attempted, or if attempted has met with the same ill success with the endeavours of the present Earl, and could never hitherto be completely or perfectly effected.

But, my lords, with great submission, if the stating and settling of these accounts, on a just and lasting foundation, should be admitted to be the duty and office of a Lord Chancellor, and that he is bound under pain of an impeachment to take care of them, yet as this is a work of the greatest moment, judgment and consideration, and must unavoidably take up a very great portion of time, and put a total stop and obstruction for the present to all the other branches of his high office, we humbly hope, my lords, that his being cut off in the midst of his endeavours of that kind, and thereby prevented from further pursuit of them, that this will be a consideration of the greatest weight with your lordships in determining the fate of this noble Earl, and that he will not be made criminal for leaving it unfinished, when his power of proceeding further therein was suddenly and unexpectedly taken from him.

My lords, your lordships very well know that the business not only of the Court of Chancery, but of all the other courts of Westminster-hall, and even of your lordships' supreme Court of Judicature, is and must necessarily be distributed, and disposed of into variety of hands, that some are assigned to one province, some to another, and all of them concurring to the same end, the carrying on the business of the respective courts to which they belong.

And, my lords, the officers and ministers of each of these courts of justice, on their being admitted thereto, give each of them the security of an oath, or some personal security for the due and faithful discharge and execution of their duty, whilst they continue in their offices.

Now, my lords, what can be the end of requiring and resting on these securities, but to relieve and ease the minds of their superiors from the necessity of prying and examining daily into their behaviour and conduct, to the hindrance and neglect of their own greater and more immediate duty?

The officer is at the peril of his oath or the security he has given, nay, even at the peril of the office itself, to discharge his duty as he ought, and justly forfeits his office by a neglect or breach of any part of his duty therein: and if one or two of them should have no regard to all or any of these ties, must the ten righteous that are left, nay, must the Chancellor himself be punished for their sakes?

But, my lords, Masters in Chancery are generally, if not always, chosen from the profession of the law, and the manner of their education, and the nature of their studies, are justly supposed to set them above the temptation of mean, of base, or little and unjust actions.

Many of that profession, your lordships will permit me to observe, do now, and have, in all ages, worthily adorned even the august body of the House of Peers, and have been advanced to the highest dignities in the state.

And then, my lords, I humbly hope it will not be thought an observation altogether improper, that when one of this liberal education, when one brought up in the study and practice of a profession, whose very principles consist in the knowledge of virtue and honour, of the rules of justice and equity, and all the accomplishments which can adorn life, or make him useful to his king and country; I say, my lords, I humbly hope it will not be improper to observe, that when such a one applies for an office in the civil government, which he is in any degree qualified for, it is no wonder that he should meet with a more favourable reception than other persons, who perhaps may have nothing but their estates or fortunes to recommend them.

The very profession of such a one is, my lords, almost a sufficient security and recommendation of itself, and immediately induces a persuasion and belief, that they will do nothing to forfeit their honour, their reputation, or that credit and esteem which they so justly do, and ought to regard and value.

But when, my lords, it is remembered that the additional security and sanction of an oath is likewise required from them, when they invoke the Majesty of Heaven to bless them as they perform their duty, what higher, what greater or better security can be taken from them for the due and faithful discharge of their duty in the office they are entering upon?

The oaths they take upon that occasion your lordships have already heard, and no doubt will have observed, that they differ little from the oath, which even the Lord Chancellor himself takes on his being admitted to his own high office.

And as they sit with him in judgment on the

bench, share with him in carrying on the most important business of that Court, which is next in dignity to the supreme court of judicature we are now before, when they are in most cases necessary for the distributing and dealing out justice and equity, and fixing the rules and bounds of property to the suitors there. Can it, or will it, my lords, be easily or readily imagined, that they should have no regard to all these sacred ties of duty, that they should prostitute their honour, their conscience, and every thing that is dear and valuable to them, for the sake of any worldly or temporal consideration whatsoever?

These, my lords, we humbly apprehend, are some of the reasons which may be offered, why no personal security has ever been required from a Master in Chancery, on his admission into that office, any more than from the Chancellor himself.

And if this be so, though there could be no need or occasion for the Chancellor's making any declarations concerning their ability or substance, yet we humbly hope we shall be able to shew to your lordships, that this declaration, which is made one of the Articles of an impeachment against this noble Earl, that even this too, was not without its just foundation of reason and truth.

And this, my lords, leads me to observe a little on the Eleventh Article of this Impeachment.

My lords, the Eleventh Article contains a two-fold charge against the Earl; first, That whilst he continued in the office of Lord Chancellor, in order to advance and increase the illegal and corrupt gain arising to himself from the sale and disposal of the offices of Masters in Chancery, he did admit several persons to those offices, who at the time of their admissions were of small substance and ability, unfit to be trusted with the great sums of money and effects of the suitors lodged in their hands.

The second charge against the Earl in this Article is, that he did publicly, in open court, falsly represent the persons by him admitted to the offices of Masters of the Court of Chancery, as persons of great fortunes, and in every respect qualified for the trust reposed in them.

These, my lords, are the two branches of this Article against the Earl; and I would beg leave to observe upon it in general that it is not so much as charged or insinuated in any part of it, that the Earl knew, or had the least notice of any insufficiency or inability in the Masters at the time he admitted them to take upon them that great trust.

If that had been the case, or could have been clearly made out, the Commons without doubt would not have omitted so material an aggravation of this part of their charge against the Earl.

They have indeed proved, that the Earl did not think fit to take the Masters own words for their abilities and fortunes, and therefore never asked them the question.

But, my lords, we hope we shall be able to shew to your lordships, that the Earl took a much more proper and effectual method, to be satisfied of the truth of their circumstances and abilities, than by any appeal he could have made to themselves; that he did not content himself with barely asking the question for the sake of an answer, which he ought to have had no regard to, whether true or false, but that he weighed, considered, and judged of the account he received of them on his enquiry from others, and determined accordingly, whether they were or were not fit to be placed in an office of so great trust.

That in consequence thereof, he absolutely rejected some, though their friends offered him a greater present, or if it must be called so, a greater price for their offices than others, for want of an estate or fortune in possession of their own, that might be some ways adequate to the great charge they were going to be entrusted with.

That from the same views of security to the suitors of the Court, he refused to admit others, from an apprehension that the sums they offered, though considerably greater than were offered by others, would too much exhaust and lessen their own fortunes, to be able, with any degree of ease or credit, to support themselves, or be consistent with the safety and security of the suitors' money and effects, to be entrusted with them.

These instances, my lords, we shall be able to produce to your lordships; and when we have so done, we hope we shall need to be in very little pain for the second part of this charge, which the Earl by his Answer has partly admitted to be true; that is, that he believes he may, upon some occasions, have declared, that he thought the then body of Masters as good, with respect both to their estates and ability for the discharge of their office, as had been at any time before.

This, my lords, the Earl owns by his Answer, That he may on some occasions have said; and if it were true, where was the crime of it? It was indeed more than he needed to have said, as no one had authority to require him to make any declaration at all about the Masters.

But, my lords, if he had said more than he needed to have said, and yet his saying was true; we hope, my lords, that will never be imputed to him as criminal.

Indeed, my lords, the honourable Managers for the House of Commons, both in their opening, and the course of their evidence, have tacked to this declaration a circumstance arising from the death of Mr. Fellowes, one of the Masters, which happened just before this declaration was made, from whence they would infer, and one of them was pleased to say, it was a necessary declaration to be made at this time, to give notice that the office was worth buying, or to that effect.

But, my lords, we humbly hope, how ingenious soever the observation may be, that it

will have no weight with your lordships, if the truth and nature of the case itself will support the declaration that was made upon that occasion.

But, my lords, before I leave this Article, I would beg leave to add one observation more to what I have already said upon the first part of it, concerning the obligation on the Masters in Chancery to be faithful in the discharge of their duty, from the honour of their profession, and the nature and sanctity of the oath they take on their being admitted Masters.

And, my lords, I the rather chuse to take notice of it, because it is an argument which the honourable Managers of the House of Commons have themselves furnished us with.

Your lordships were pleased to observe, that, in the very beginning of their evidence, they took great care and pains to exalt and dignify the office of Masters in Chancery as high as possible, and therefore they read to your lordships several commissions, and put in others to the table, from the time of Edward the 6th, down to this time, to prove, that the Masters in Chancery were joined in commission with the Master of the Rolls, and the judges themselves, for the hearing and determining of causes in equity, in the absence of the Chancellor.

And it was said by one of the learned Managers in the first day's opening upon that occasion, that the Masters in Chancery were next in power to the Chancellor himself, after the Master of the Rolls.

From which I would humbly presume to infer, that if this be so, if they are persons of such eminence and worth, and so nearly related to justice itself, on their commencing Masters, it is still a higher obligation on them to be careful in the discharge and execution of their office; and then, whether these considerations, whether the ties of honour, of conscience, and of the venerable company they are from henceforth joined with, and made equal to; whether these may not in a great measure be supposed to supersede that strict enquiry, which a Lord Chancellor would otherwise think himself obliged to make; this, my lords, we humbly hope will not be thought an argument altogether foreign to the present question before your lordships, but will, we hope, at least extenuate, if not wholly wipe off any guilt, that for want of such enquiry might possibly be imputed to the Earl on his admission of Masters.

But, my lords, there is one observation farther, which I cannot let pass on this occasion, though it is not strictly to the Article I am now upon.

And that is, my lords, what the same learned Manager observed in his reasoning upon that point, that the offices of Masters in Chancery being offices of such great trust and dignity, that no offices were more improper to be bought and sold than they, except those of the judges themselves.

This, my lords, might, and, no doubt, was a very just and proper observation to be made, in support of the point they were endeavouring to maintain.

But, my lords, it falls out very unfortunately, to disparage and weaken another part of their Articles, which, without doubt, they have equally at heart to maintain, and that is, the obliging these great men, these judges, these Masters in Chancery, to give security for the suitors' money and effects in their hands, as if they were not fit otherwise to be trusted with them.

They are just before made a sort of petty chancellors, equal in dignity and power to the judges themselves, and fit to be entrusted with the disposal of the properties and fortunes of all the suitors of the Court of Chancery, and therefore their places must not be bought or sold; but here they are reduced and abased to the low and servile condition of a common receiver or rent-gatherer, and must give security for all the suitors' money or effects that shall happen to come to their hands for fear they should run away with it.

All, my lords, I shall presume to add further under this head, is, that though one of the Masters has indeed frankly owned, that he was worse than nothing when he came into his place of a Master in Chancery, yet, from another part of his evidence, he owns, and it fully appears, that he grossly abused and imposed upon the Earl in concealing it from him, of which the Earl, when he came to have notice, very justly complained, and expressed his surprize and resentment, that he should pretend to come into an office which he was not able to pay for.

And how far the same gentleman will in time to come remember the kind and generous return made him by the Earl, of the 1,500 guineas, when he came to find him in distress afterwards for want of it: this, my lords, must be left to your own conscience, and the gratitude of his own heart; as must also the like return of 1,500 guineas made to another of the Masters under the like distress and inability to bear the want of it; these, my lords, are instances of the greatest generosity, honour and tenderness, I had almost said charity, in the noble Earl, that perhaps can be produced in private life on the like occasions; however, they have been disfigured and disguised by the learning and ingenuity of the honourable Managers for the House of Commons.

In the mean time, my lords, I would beg leave to observe, that the ready paying and producing of these sums to the Earl, for their places at first, their not giving him the least notice or intimation that it was not their own money, and the figure and appearance they made in the world; these all concurring might easily mislead the noble Earl into a persuasion and belief, that they really were what they appeared to be, that they were well able and sufficient to bear the expence of it. And neither of these two, or of the other Masters have

given any sort of evidence, that the Earl knew, or had reason to entertain the least suspicion to the contrary: and if now, at last, the deficiencies of these, and of all the other Masters placed in by the Earl shall appear to have been already made good, or to be so far secured, as to prevent any danger of a loss to the suitors of the Court, from their several offices (which we humbly hope, on the strictest examination, will appear to be the case) we may then humbly presume to hope, that the Earl will not be thought to be criminal under any part of this Article; but that your lordships' great justice will acquit him wholly of it.

But, my lords, I would now humbly beg leave to offer a few words and observations on the Twelfth Article, which comes next to be considered of.

This, my lords, charges that whilst the Earl was Chancellor, an unjust and fraudulent method was practised in the Court of Chancery, on the sale of Masters' places, and on the admissions of new Masters; that the sums agreed to be paid for the purchase thereof, were paid out of the suitors' money, either by way of retainer, or by replacing the same again in the hands of the selling Master, immediately after the admission of the new one: and that by this practice the price and value of these places was greatly advanced, and persons of small ability and substance were encouraged to contract for the same, which has occasioned great deficiencies.

This part, my lords, shews only the contrivances amongst the Masters themselves, how to get into those offices; and so far the Earl seems to be but little concerned in it.

But then comes the Charge against the Earl, that though this practice was notorious and public, and the Earl was fully acquainted therewith, yet, for his own unjust and corrupt profit, in the selling of these places, he took no measures to prevent or reform that abuse, either by causing schedules to be taken of the money and effects of the suitors, delivered over to the new Master, or by appointing any person to supervise or inspect the transfer, and delivery thereof: but, on the contrary, suffered that fraudulent practice to continue without controul, whereby great embezzlements have been made of the suitors' money and effects.

My lords, the noble Earl, by his Answer, says, That he was totally ignorant of this practice amongst the Masters: but admits, that he never gave any particular directions for delivery of the suitors' money and effects, by a schedule to the succeeding Master; and says, he never heard that his predecessors ordered such schedules to be made; but says, he believes such schedules were made, between the new Master and the old, on the general order of transfer, made of course on the admittance of the new Master.

This, my lords, is the Earl's answer to this Article. And as he has in general denied his knowledge of these practices amongst the Masters, it was certainly expected by your lordships, that the honourable Managers for the House of Commons, would have fully proved it upon him, and thereby have falsified his Answer to this part of the Charge.

But, my lords, if I did not greatly mistake the evidence to this point; it has proved no thing more, than that the Earl knew of this practice, at the same time that all the rest of the world did, that is, a little before Christmas last; when the curtain drew up, and displayed the Masters in their true colours.

Then it was, and not before, that the Earl was let into this secret by the kind assistance and help of Mr. Thomas Bennet, and the affidavits that were made by him and others on that occasion.

But, my lords, with great submission, the Earl's knowing of it at that time was a little too late for him to give any orders for preventing or redressing it for the time to come; for the great seal was taken from him sometime before, and then all his knowledge after could be of no use to him, but only to shew how treacherously he had been dealt with, in not being let into this useful part of learning, whilst it might have done him any good.

And, my lords, if this be so, as it can be no ways criminal in the Earl not to put a stop to a practice he was wholly ignorant of, and which the Masters kept private amongst themselves. We humbly hope, how ill soever the Masters may be thought to have deserved of this noble Earl, that the Earl himself will not be thought to have deserved ill of your lordships, in not endeavouring to prevent it; and that, in consequence thereof, your lordships' great justice will acquit him of this part of the Impeachment.

And, my lords, as to the last part of this Charge, the not causing proper schedules to be taken of the suitors' money and effects, delivered over to the succeeding Master, as a method which might, in all probability, have prevented the practices amongst the Masters, complained of in the first part of these Articles; this, my lords, we humbly apprehend, neither can, nor is intended, even by the Articles themselves, to affect the Earl farther or otherwise, than as a means he ought to have made use of, to put a stop to these dangerous contrivances, formed and set on foot amongst the Masters, to dispose of their places to the best advantage.

But, my lords, if the Earl himself knew nothing of these contrivances, if he was wholly a stranger to, and unacquainted with the mischief, it will surely, we hope, be no crime in him that he did not look out for a cure.

But, my lords, it may, perhaps, be worth while, just to consider of the wonderful discovery that seems to have been made of these schedules, and how far they would have answered the ends proposed, admitting the Earl had known of these practices amongst the Masters, and had been better disposed than the

Commons are pleased to think he was, for the remedying of them.

And, my lords, I am afraid this would have proved very far from being an infallible method of remedying these evils for the time to come; for, my lords, if the Masters would but trust one another, or any body would trust them for a very few days, might they not have done just the same thing they did before? Might they not have immediately replaced the money again in the hands of the selling Master; or have paid off a bond or any other security they had given on the borrowing of the money, as soon as ever they were admitted, and had got the suitors' money into their hands? And if they had so done, and this had been discovered and complained of, would it not, with great justice, have been called instituting a trifling and fallacious method of security for the suitors, which could do them no manner of service, but tended only to amuse and deceive them; and then whether this would not have made a better figure in an impeachment, than what is here fixed upon, may, we humbly hope, be thought deserving of your lordships' notice; especially, my lords, when it might have been so easily explained and urged, as no doubt it would have been by the learned Managers, that the very taking of these schedules was for the sake of seeing into the nature and value of the office to be sold, that he might the better know how to set his price upon it.

But, my lords, I shall only beg leave to add one or two very short observations more upon this head, and then call such witnesses, as we have, to speak to these two Articles.

And, my lords, the first observation I would beg leave to mention, is, that the Earl by his Answer owns that he did not, neither did he ever hear, that any of his predecessors ordered such schedules to be made; neither is there the least proof on the part of the honourable Managers for the House of Commons, that any such schedules ever were made, or thought of, till Mr. Lightboun very happily hit upon them.

Indeed, the Earl owns by his Answer, that he believes such schedules were usually made between the old Master and the new, on the general order of transfer made of course on the admittance of the new Master.

But, my lords, these are not the schedules the Articles mean, as I apprehend, or, if they are, the Earl at least was to have one part of them; or else they could be of no use to him in guarding against any fraudulent practices of the Masters. And if he had had one, what security that could have been to the suitors of the Court, if the Masters should have been disposed to make use of their money afterwards, this, my lords, I have already endeavoured to consider of.

The next observation, my lords, I would beg leave to make under this head, is, that if such schedules had been made, what security would this have been to the Earl, that they were in all respects true, or with any certainty to have been depended on?

Some, my lords, even of the Masters themselves, in the hurry they were lately obliged to give in their accounts, discovered afterwards several mistakes and omissions therein; and though they were given in upon oath, yet on a review, and a more narrow and careful inspection and examination of them, it was found they were not altogether to be relied on; and therefore the Masters were forced to set them right in their post-accounts, given in at some distance of time after; and whether any, or what other, or better security for the truth of those accounts has been yet found out, I am wholly ignorant of.

My lords, the third and last observation I would beg leave just to mention, and submit to your lordships under this head, is, whether there be any, and what real mischief in the practice itself, so grievously complained of in this Article?

It is, my lords, notorious, that in every one of the offices of these Masters in Chancery, there is always necessarily a much greater sum of money lying dead in the office, than goes to pay for their places, either for want of securities whereon to place the money, or from the different claims of persons entitled thereto; or to satisfy the demands of creditors, and other persons, as they shall from time to time come in and prove their debts, and from several other causes, which I need not here enumerate.

And then, my lords, whether there be any great difference between paying for their places out of the suitors' money, lying dead in their hands, or raising so much money out of their own estates and fortunes, in order to let the suitors' money lie dead; whether a practice of this nature, which does no sort of hurt to the suitors, is of no advantage to the Masters, and which the Earl himself was wholly a stranger to, and which, if he had known, could not have been prevented; whether this can be heightened or improved into so heinous a crime in the Earl, as to need or deserve the most solemn prosecution which we are acquainted with, a prosecution by the representatives of the whole body of the nation; this, my lords, we humbly hope will deserve to be thought of. In the mean time, as the Commons have chosen your lordships to be the judges, the Earl himself with the greatest pleasure joins with them, and humbly appeals to your lordships' just and impartial judgment.

Serj. *Probyn.* My lords, the evidence which we have next to lay before your lordships relates to the Eleventh Article, by which it stands charged, that several Masters admitted by the noble Earl were persons of small substance and ability; and in that respect very unfit to be trusted with the great sums of money, and other effects belonging to the suitors, which were lodged in their hands by order of the said Court; notwithstanding which the noble Earl did publicly, in open Court, declare them to be

persons of great fortunes, and in every respect qualified for the trust so reposed in them, to the manifest deceit and prejudice of the suitors of the said Court: but, my lords, though the charge of this Article be conceived in general terms, yet I apprehend we are now only to account for the abilities and circumstances of such of the Masters, as they have descended into any particular evidence against, upon that head: now the Masters, who have been admitted in by his lordship, and against whom any insinuations of this kind have been levelled, are Mr. Kynaston, Mr. Bennet, Mr. Elde, and Mr. Thurston: but I should in the first place observe, as to Mr. Elde and Mr. Thurston, that there is not the least pretence of any deficiency in either of their offices, from any evidence that has been yet offered by the learned Managers; they stand both of them without objection in point of substance. As to Mr. Kynaston, indeed, I do own, that at the time when he delivered in his accounts, there appears to have been a deficiency in his office; but since that time he hath given such security, as the Court thought fit to accept of, for answering it to the suitors concerned. At the time of his admission he appears to have been a man of fortune; he had a good estate in land, and a considerable sum of money in bank; and had a great deal of wood upon his estate: if he really was a man of a considerable fortune at that time, and if he appeared so, and came well recommended in other respects to the noble lord, what foundation is there left to support that part of the Charge against the noble Earl? As to Mr. Thomas Bennet, indeed, though he did make an appearance in the world equal to a man of fortune, yet he now pretends it was far from being so, though he had an estate in land; yet he has told your lordships it was incumbered; but, with submission to your lordships, it doth not appear that any of these incumbrances were made known to the noble Earl; on the contrary, he appeared to him in the same light as in the year 1720, when he saith he was worth 20,000*l.* and these incumbrances being private, it is impossible the noble Earl should then know them. We shall shew that at this time he was not only a man of visible substance, but of real substance, equal to those who are usually admitted into these offices; and if he was equal, both in reputation and fortune, with those admitted by the noble Earl's predecessors, we hope it shall not be imputed a crime in him, to have trod in their steps in that particular. In order to make this out against Mr. Bennet, we shall prove, that about the time when he applied to Hiccocks, to get back part of the 7,000*l.* he then declared his substance was so good, that if he could but have 2,000*l.* he would pay the rest himself; he denied before your lordships that he said so; but we have persons of undoubted character to prove that he did say so. And when that appears, we hope you will give the less credit to Mr. Bennet's testimony in any other particular which concerns his fortune. We shall likewise prove, as to Mr. Hiccocks and Mr. Rogers, that the sums of money, which they retained, are now submitted to be returned by them respectively to the Court, to answer any deficiency, so far as the estates of their successors shall fall short in satisfying the same; so that upon the whole, the suitors are in no possibility of suffering by any transaction of Bennet or Kynaston. We shall beg leave to call our witnesses, and prove the several facts I have opened to your lordships upon this Article.

Com. Serj. My lords, we humbly apprehend that in this case the noble Earl is not responsible for the bad circumstances of the party; if he, upon enquiry, have received such an account as is proper to rely upon and to satisfy a reasonable man, it is sufficient: the greatness of the trusts reposed in these Masters hath been magnified, and great it is; but your lordships will please to consider, that it is not to be expected from the nature of the thing, that persons of great or overgrown fortunes should take upon them those offices. They have informed your lordships, that 120,000*l.* hath been in one of these gentlemen's hands. I believe no persons of such vast estates as 100,000*l.* or 150,000*l.* would give themselves the trouble of executing these offices, attended with such risk, and requiring so great attendance. I believe the office of a Master in Chancery will never find either such buyers or sellers; all that can be expected is, that they must be men of reasonable fortunes, persons of 4 or 500*l.* a year, brought up with a liberal education; persons who are of good characters as to their integrity and abilities; this is all that can be reasonably expected, and we apprehend it hath appeared to your lordships, that these Masters, which the evidence hath been given of, were such, and such a representation was made of them to the noble Earl. My lords, I must submit it upon the evidence given in that behalf by the gentlemen of the House of Commons in this prosecution, that Mr. Kynaston did appear no way unfit, but a person proper to be admitted into such an office; no objections are made either to Mr. Elde or Mr. Thurston. As to Mr. Thomas Bennet, it will appear that his deficiency will be made good, and that is the best proof of his ability; and, we hope, Mr. Kynaston's will be so too. As to Mr. Thomas Bennet, he hath denied that ever he told Mr. Hiccocks, that if he would return 2,000*l.* he would pay the rest: being asked, whether he had declared to any body, that he had made that offer to Mr. Hiccocks, he answered directly in the negative, that he had not, no, he was sure he had not; he was asked the question over and over. But if my instructions don't fail me, we shall produce three witnesses to shew your lordships, that Mr. Bennet declared the same thing over and over again, and consequently it could not be a slip of his memory.

Mr. *Steele* called.

Serj. *Probyn.* I desire he may inform your

lordships, as to what reputation and character Mr. Bennet was of, in point of fortune, when he was admitted Master.

Steele. Which of the Bennets?

Serj. *Probyn.* Mr. Tho. Bennet.

Steele. It is near two years ago since Mr. Tho. Bennet came to be admitted a Master in Chancery; he was looked upon then to be a man of good substance and of good reputation; and since that he had married a lady of a good fortune, he made a good appearance in the world, and was generally esteemed to be a man of substance.

Serj. *Probyn.* Did he keep his coach?

Steele. I have heard so; I don't know that of my own knowledge.

Mr. *Plummer.* My lords, if the counsel have done, I desire to know what character Mr. Bennet had as to his integrity, whether he was accounted an honest man or no.

Steele. My lords, I never heard to the contrary in my life; nor ever knew any thing to the contrary.

Mr. *Walker* sworn.

Serj. *Probyn.* We desire that Mr. Walker will inform your lordships, what he knows of any proposal or agreement for the repayment of any money by Mr. Hiccocks.

Walker. My lords, Mr. Hiccocks, by order of the Court of Chancery, was to be examined upon interrogatories, whether he had paid over all the monies and securities of the suitors of the Court of Chancery to his successor Mr. Bennet? it having been alleged by Mr. Bennet, that he retained out of them 7,500*l.* Mr. Hiccocks did think fit to submit to the payment of that money, to make so much good to the suitors of the Court, as the estate of Mr. Bennet should prove defective in satisfying, as appears by the petition delivered by him, and the answer to the petition.

Mr. *Lutwyche.* We shall see that by the petition. We desire that the copy of the petition may be read; they are giving an account of written evidence: I desire to ask, whether you are not concerned as clerk for Mr. Hiccocks?

Walker. I am concerned for Mr. Hiccocks as his solicitor.

Mr. *Lutwyche.* Whether you had any authority from Mr. Hiccocks to present that petition?

Walker. I had authority to present that petition.

Mr. *Lutwyche.* When did you present the petition?—*Walker.* About three or four days ago.

Serj. *Pengelly.* We desire to see what the petition is. It hath been presented since the great seal was in commission: read it.

[Mr. *Walker* reads it:]

"To the Right Honourable the Lords Commissioners for the Custody of the Great Seal of Great Britain, the Humble Petition of John Hiccocks, Esq. late one of the Masters of this Court,

"Sheweth; that by an order of the 23rd of Feb. last, upon the affidavit of Thomas Bennet, esq. your petitioner's successor (who swore that the sum of 7,500*l.* part of the monies belonging to the suitors of this Court, did remain in your petitioner's hands, and was never paid over to him,) it was ordered that your petitioner should be examined upon interrogatories, whether all the monies, securities, and other effects, belonging to the suitors of the Court, were delivered over by your petitioner to the said Thomas Bennet, and whether your petitioner kept away any, and what part, by him.

"That interrogatories have been accordingly prepared, and your petitioner is ordered to put in his examination, or stand committed.

"That your petitioner, by reason of his indisposition, is not in a capacity to put in his examination.

"That though your petitioner did pay over, satisfy, and assign to the said Thomas Bennet, all the monies, effects, and securities of the suitors of the Court in your petitioner's hands; and the said Thomas Bennet hath given your petitioner a receipt in full for the same, yet so far as the estate of the said Thomas Bennet shall fall short to satisfy the just demands of the suitors of the Court, your petitioner is willing to pay the sum of 7,500*l.* into Court, subject to the order of the Court, so soon as your petitioner can raise the same; and your petitioner is willing to pay the sum of 2,000*l.* part thereof, within ten days, and the residue thereof within three months, so as the same (as between your petitioner and the said Thomas Bennet) may not be construed to extend to ease the said Thomas Bennet's estate from being liable, in the first place, to answer the demands of the suitors of the Court; but so as the same may abide as a security to answer any deficiency of the said Thomas Bennet's estate; and to the end it may appear whether there will be any deficiency or not, that the real and personal estate of the said Thomas Bennet may be forthwith sold and disposed of; and in the first place applied to answer the demands of the suitors of the Court; and the rather, for that your petitioner is informed the said Thomas Bennet hath, pursuant to some order of this Court, by recognizances, and other assurances, subjected his whole estate towards making good those demands.

"Your petitioner, therefore, most humbly prays your lordships, that upon payment into Court of the said 7,500*l.* on the terms aforesaid, subject to the further order of the Court, all further proceedings upon the said order, for compelling your petitioner to be examined upon interrogatories may be stayed. And your petitioner, &c."

[He reads the Order.] "*May* 8, 1725.

"Upon payment of 3,000*l.* into Court, and giving security, such as Mr. Holford shall approve of, for payment of the further sum of 4,500*l.* also into Court, in a month, both sums to be subject to the farther order of the Court; let all proceedings for the compelling the peti-

tioner to be examined upon the interrogatories before the Master, be stayed. Hereof give notice forthwith. "J. JEKYLL, C. S.
"R. RAYMOND, C. S."

Serj. *Pengelly.* I would be glad to know, whether we can rely upon this as an authentic order. Did he examine it?

Walker. The original Petition and Answer are in the Register's office, to draw up an order.

Mr. *Lutwyche.* Is it a right, a true copy?

Walker. It is.

Mr *Lutwyche.* Did you examine it?

Walker. Yes, I did.

Com. Serj. If it is not wholly immaterial to examine into the circumstances of this gentleman, I would ask, whether Mr. Hiccocks is a person of ability, sufficient to make good this sum?

Walker. My lords, I don't know the circumstances of Mr. Hiccocks, nor his riches. I believe he is able to do what he hath proposed. I believe he hath paid the 3,000*l.* in money this morning; he told me he would; and he hath proposed security for the remainder, 4,500*l.* and I believe the security will be approved of.

Mr. *Lutwyche.* If they have done, I desire he may be asked, How long ago it was since Mr. Hiccocks was ordered to be examined upon interrogatories?

Walker. I think the order is dated the 29th of February.

Mr. *Lutwyche.* And how long is it ago since this proposal was made?

Walker. The Petition was presented the 8th of this instant May.

Mr. *Lutwyche.* Was the Petition presented before his examination? When was it answered?

Walker. It was answered the 8th of May. It was preferred a little while before. I believe two or three days. There was an order, that Mr. Hiccocks should put in his examination in four days, or stand committed; thereupon this Petition was presented.

Mr. *Lutwyche.* I think it was on payment of so much money, and giving security for the rest, that all proceedings were to stay. I don't find Mr. Walker can say the money is paid, or security given.

Walker. Mr. Hiccocks told me the 3,000*l.* was paid, and I know he hath offered security for the 4,500*l.*

Mr. *Lutwyche.* One or two securities?

Walker. I believe only sir John Buckworth.

Mr. *Richard Rogers* sworn.

Serj. *Probyn.* I desire he may be asked, what he knows of the payment of any money, or the directing the payment of any money into Court by Mr. Rogers, the late Master, in satisfaction of the deficiency of Mr. Kynaston.

Rogers I did, my lords, by the direction of Mr. Rogers, the late Master, prefer a Petition about the latter end of April last, upon the 28th or 29th of April, to the right honourable the lords commissioners, and thereby did offer to give a recognizance to make good to the suitors of the Court any sum not exceeding 6,000*l.* as the estate of Mr. Kynaston should prove defective in answering the effects of the suitors of the Court. The Petition is answered, and I believe they design to pay the money.

Serj. *Probyn.* Have you the Petition?

Mr. *Lutwyche.* Is the order drawn up?

Rogers. The Petition itself I have in my hand.

[*Clerk* reads:]

"To the Right Honourable the Lords Commissioners for the Custody of the Great Seal of Great Britain, The humble PETITION of WILLIAM ROGERS, esq. late one of the Masters of the High Court of Chancery.

"Sheweth; that, by an order made by your lordships the 20th of January last, it was ordered, that Mr. Kynaston, one of the Masters of the said Court, who succeeded your petitioner, should, in a week, deposit the sum of 26,908*l.* 11*s.* 3*d.* ½ in the Bank of England (being the balance of the account of money, and securities of and belonging to divers suitors of the said Court, paid into the hands of the said Master Kynaston and your petitioner,) or in default thereof, that the said Mr. Kynaston should enter into a recognizance, in the penalty of 53,817*l.* with two or more sureties, to answer and pay the same as your lordships should direct.

"That the said Kynaston not having paid the said 26,908*l.* 11*s.* 3*d.* ½ into the Bank, or given security for the same, as the said order directed; and having before proposed, towards satisfaction of the said 26,908*l.* 11*s.* 3*d.* ½, to assign over a debt of 20,850*l.* owing to him from one De la Hay, for the benefit of the said suitors; it was by an order made by your lordships the 29th of January last, ordered, that the said Master Kynaston should assign over De la Hay's debt to Mr. Holford, one other of the Masters of the said Court, for the benefit of the said suitors, and should give his own recognizance for the said 26,908*l.* 11*s.* 3*d.* ½ in the penalty of 53,817*l.* And upon his so doing, the time for his performing the said former order, should be enlarged to the Wednesday following.

"That by another order made the 3d of February last, your lordships ordered, that upon Mr. Kynaston's assigning of the said debt, and upon his signifying his consent to be examined upon interrogatories for discovery of all other his real and personal estate, and that the same might be assigned and conveyed to the said Master Holford in trust for the said suitors, the time for performing the former order should be enlarged to the Wednesday following.

"That pursuant to the said order, the said John Kynaston assigned over the said De la Hay's debt; but the same not being sufficient to answer the said sum of 26,908*l.* 11*s.* 3*d.* ½

Nicholas Paxton, solicitor for, and on behalf of the suitors of the said Court, on the 15th of February last, preferred his petition to your lordships setting forth the several proceedings aforesaid; and that it appeared by Mr. Kynaston's affidavit, that 6,000*l.* part of the said 26,908*l.* 11*s.* 3*d.* ¼, was retained by your petitioner, at the time your petitioner surrendered his said office to the said Mr. Kynaston; and that the same still remained in your petitioner's hands: it was therefore prayed, that your petitioner might forthwith pay the same for the benefit of the said suitors, or to such person, and in such manner as your lordships should direct.

"That upon hearing the said petitioner upon the 23d of February last, your lordships were pleased to order your petitioner should be forthwith strictly examined before Mr. Holford, one of the Masters of this Court, whether all the monies, securities, and effects, belonging to the said suitors, were delivered over by your petitioner to the said Mr. Kynaston, and whether he kept any, and what part thereof by him.

"That in pursuance of the last order, interrogatories have been exhibited for the examination of your petitioner; and in case your petitioner should put in his examination thereto, he doubts not but it would appear that your petitioner hath acted with great justice towards the said Mr. Kynaston, and that Mr. Kynaston ought to answer and make good the said 6,000*l.* to the suitors of the said Court; however, your petitioner being unwilling that any part of the deficiency in the said Master Kynaston's office should be imputed to your petitioner, or that the suitors of the Court should be put to any expence or trouble, in making any farther enquiry touching the said 6,000*l.* your petitioner is willing (if your lordships shall think fit) to give his own recognizance, or a good and sufficient mortgage, to be approved of by one of the Masters of this Court, to such person or persons as your lordships shall direct to answer and make good to the suitors of this Court, any sum not exceeding 6,000*l.* as the estate and effects of the said Mr. Kynaston shall fall short of satisfying the said 26,908*l.* 11*s.* 3*d.* ¼, which he was ordered to deposit in the Bank of England as aforesaid; or if your lordships shall think it more for the benefit and security of the said suitors, that your petitioner should bring 6,000*l.* into Court, your petitioner is willing to bring in such sum for the purpose aforesaid, having a reasonable time allowed him to raise the same.

"Forasmuch therefore as it is not pretended but that your petitioner has paid and delivered over to Mr. Kynaston all the money and securities belonging to the suitors of this Court, which were in your petitioner's hands at the time when he surrendered his said office to the said Mr. Kynaston, except the sum of 6,000*l.*

"Your Petitioner humbly prays your lordships will be pleased to make such Order in the premises, as to your lordships shall seem meet; and that in the mean time all proceedings upon the said order of the 23d of February last, for examining your petitioner upon interrogatories, may be stayed. And your Petitioner, &c."

[The Clerk reads the Order.] *April* 29.

"Upon the petitioner's paying the said 6,000*l.* into Court, subject to the farther Order of this Court, let all proceedings upon the said Order of the 23d of February last, for examining the petitioner upon interrogatories, be stayed. Hereof give notice forthwith.

"Jeff. Gilbert, C. S.
"R. Raymond, C. S."

There was another Petition preferred, but never answered.

"To the Right Honourable the Lords Commissioners for the Custody of the Great Seal of Great Britain.—The Humble Petition of William Rogers, esq. late one of the Masters of this Court.

"Sheweth; that Mr. Paxton, (in behalf of the suitors upon Mr. Kynaston being 26,908*l.* 11*s.* 3*d.* ¼, deficient in his accounts to answer the suitors' monies in his hands,) having, by his Petition to your lordships, represented (*inter alia*) that your petitioner, upon surrendering your petitioner's office to him, detained, and still hath, in his hands, the sum of 6,000*l.* of the said suitors' money; your lordships, upon hearing the said Petition, on the 23rd of February last, were pleased to order your petitioner should be examined before Mr. Holford, one of the Masters of this Court, whether all the monies, securities, and effects belonging to the said suitors, were delivered over by your petitioner to the said Mr. Kynaston?

"That your petitioner, on the 29th day of April last, preferred the annexed Petition to your lordships; and your lordships were, thereupon, pleased to make the Order thereunto subscribed.

"That your petitioner is informed, the said Mr. Kynaston hath, pursuant to a former Order of your lordships, by recognizance and assurances, subjected his whole estate towards making good his said deficiency.

"That your petitioner, upon surrendering his office, received from the said Mr. Kynaston, proper discharges for all monies, securities and effects of the said suitors, then in your petitioner's hands, which your petitioner is ready to produce and prove: and the said Mr. Kynaston, from that time, never pretended but that the account delivered in to him, contained a full account of all the money, effects and securities of the suitors of the Court in your petitioner's hands, except the sum of 70*l.* or thereabouts, which your petitioner was always ready to pay him, provided he would have given your petitioner an account wherein the said omission or mistake consisted; and your petitioner, upon examination of his vouchers, found the same to be true; but the said Mr. Ky-

naston hath hitherto neglected so to do, though your petitioner hath sent to him several times for that purpose.

"That your petitioner, upon the terms mentioned in the annexed Petition, is willing to pay a ready obedience to your lordships' Order thereupon; and for that purpose, now humbly offers, in six days time, to pay 2,000*l.* part of the said 6,000*l.* into Court, subject to the farther Order of the Court, so far as may be necessary to make good any deficiency to the suitors of the Court, which Mr. Kynaston's estate shall not be sufficient to answer.

"And your petitioner humbly prays, he may have a month's time to pay in the remaining 4,000*l.* (your petitioner being obliged to borrow the same on his estate) and that all proceedings on the said order of the 23d of February last, against your petitioner, may in the mean time be stayed: and your petitioner further humbly prays your lordships, that the said Order, made by your lordships on the 29th of April last, may be so far explained, that as between the said Mr. Kynaston and your petitioner, the same may not be construed to extend to ease the said Mr. Kynaston's estate from being liable, in the first place, to answer the demands of the suitors of the Court; or, if all, or any part of the said 6,000*l.* shall be applied for that purpose; that your petitioner may then stand in the place of the suitors of the Court, to have satisfaction out of the estate of the said Mr. Kynaston, for all or so much of the said 6,000*l.* as shall be so applied; and that the said 6,000*l.* so to be deposited by your petitioner, or any part thereof, may not be applied towards making good the said Mr. Kynaston's deficiency, till after sale and disposal of all the said Mr. Kynaston's real and personal estate for that purpose. And your petitioner shall ever pray, &c."

Serj. *Pengelly.* Is there any Order upon this?

Rogers. This was never answered.

Mr. *Lutwyche.* If they have done, I desire he may be asked, if he hath given any notice to the solicitor of the other side, of the Order on the first petition?

Rogers. I did acquaint Mr. Paxton, that I had such an Order; but I did not serve it upon him.

Com. Serj. I desire to ask you, Whether, when you told Mr. Paxton of it, he insisted upon a formal service?

Rogers. Mr. Paxton said, Let it be done as soon as possible.

Com. Serj. What answer did you give to Mr. Paxton, when he desired it might be done as soon as possible?

Rogers. I told him, I was raising the money by direction of Mr. Rogers.

Com. Serj. I ask you, If you had any directions from Mr. Rogers, for the payment of, or for raising the money?

Rogers. Yes, I had. I believe it will be paid in a day or two. I can't directly say what day. Such a sum is not immediately raised.

Com. Serj. I desire he may be asked, Whether there is any reason to doubt of his ability to raise the money?

Rogers. I believe he is able to give a security; but, as he lives in the country, he may not be able at present to pay so much money; but he is now in town, and endeavouring to raise the money.

Com. Serj. My lords, we beg leave to call two or three gentlemen, with respect to Mr. Thomas Bennet, what he hath said; and that he said he was able to pay all the rest of the money, if Mr. Hiccocks would pay 2,000*l.*

Mr. *Holford* called.

Serj. *Probyn.* My lords, we beg leave to begin with Mr. Holford, and to ask him, whether he was not employed, or concerned as a friend to Mr. Thomas Bennet, to go to Mr. Hiccocks, and what proposals he was to make to Mr. Hiccocks?

Holford. Presently after the article was delivered in by Mr. Thomas Bennet, relating to the money he said was in the hands of persons of ability and substance, to the judges and gentlemen of the Bank, Mr. Bennet did send to me, to desire I would speak to Mr. Hiccocks, that if he would pay him but 2,000*l.* he would pay the remainder of the money. I did not much care to undertake it; but, upon some importunity, I did go upon the said message; and it was this, that he desired me to tell Mr. Hiccocks, that if he would pay him back 2,000*l.* he could or would take care that the rest should be paid, and Mr. Hiccocks should not be troubled about the remainder.

Serj. *Probyn.* I desire he may be asked, Whether he had any discourse with Mr. Thomas Bennet, concerning what passed between him and Mr. Hiccocks?

Holford. Mr. Hiccocks told me——

Mr. *Lutwyche.* That is no evidence.

Holford. I am only relating the answer he returned to my message; which was, that Mr. Bennet had given in that Article, and brought his name in question, without ever acquainting him of it; and therefore he would never have any thing to do with him. I did give him that answer, and never troubled myself any more about it.

Mr. *Lutwyche.* I desire Mr. Holford would recollect the time.

Holford. I believe it was the next day after he had given in that Article.

Mr. *Lutwyche.* I think they call this witness to prove a contradiction in Mr. Bennet. Mr. Holford says, He said he was willing, he would take care the rest should be paid. I desire to know, whether he declared he had the money to pay, the money in his own hands?

Holford. No, my lords, I can't say he told me so.

E. of *Macc.* I desire to ask him, If Mr. Bennet did not expressly tell him, that he was able to pay the money: or if Mr. Holford would have gone upon the errand, without being satisfied that he was able to pay the money?

Holford. Mr. Hiccocks was my old acquaintance and friend, I did not intend to deceive him; if I had not believed what Mr. Bennet said to be true, and that he could make good what he at that time sent me to desire Mr. Hiccocks to accept, I would not have gone on that errand to him.

Mr. *Thurston* called.

Serj. *Probyn.* My lords, we desire Mr. Thurston may inform your lordships, what he hath heard Mr. Thomas Bennet say, in relation to Mr. Hiccocks, about his paying back 2,000*l.*?

Thurston. I do remember Mr. Thomas Bennet told me, and I think I was then sitting in the public office, that if Hiccocks, (as I think his expression was) would pay him back 2,000*l.* he would make up the rest himself.

Serj. *Probyn.* I desire Mr. Thurston to explain himself, whether he expressed himself in that manner that Mr. Thurston apprehended he was able to do it?

Thurston. I can't swear critically to the last words, that he would make up the rest himself; but he spoke in such words, that I understood he meant so; that was the sense of those words, as I have delivered it now to your lordships.

Serj. *Probyn.* Had you any discourse at any other time with Mr. Thomas Bennet about it?

Thurston. I believe I had some discourse with Mr. Thomas Bennet at another time; and I asked him, why he would not pay in as much as he had undertaken, if Mr. Hiccocks had paid him 2,000*l.*? The reply he gave me was, All he had in the world would not do it.

Serj. *Probyn.* I desire he may be asked, if he had any discourse with Mr. Thomas Bennet at any time, about his ability to pay this money, or whether he was able to pay it?

Thurston. I had no discourse with Mr. Thomas Bennet directly, of his ability to pay in this money, when these accompts were called for; but I do remember, at a preceding time, he was talking of Hiccocks's detaining his money by way of retainer; explaining the reason, why he paid for the place that he bought of Mr. Hiccocks out of the suitors' money, that it was the most compendious method of doing in that case, and prevented the trouble of mortgaging his estate.

Serj. *Probyn.* Did he say any thing in case of his death, whether he should leave sufficient to satisfy it?

Thurston. He said at that time, if he died, there would be estate sufficient to answer it; therefore he had the less occasion to trouble himself to raise the money, but to pay it in the particular manner I have mentioned.

Mr. *Plummer.* I desire to ask him, If Mr. Bennet explained to him in what manner the money was to be raised to make good the deficiency?

Thurston. He did not at all explain to me how he was to raise it.

Mr. *Plummer.* I desire to ask you more particularly, Whether he mentioned to have insured any money upon his life?

Thurston. Not at that time, as I remember; I have heard him at other times talk of insuring money on his life.

Serj. *Pengelly.* When was the first time that Mr. Bennet told you, that if Mr. Hiccocks would pay him 2,000*l.* he would make up the rest himself?

Thurston. My lords, I can't remember distinctly the time, never having imagined I should be called upon to repeat it on this occasion; but it must necessarily be after the accompts were given in before the judges. I can't exactly remember the time, or day, or week.

Mr. *Elde* called again.

Serj. *Probyn.* My lords, we desire that Mr. Elde may inform your lordships, what discourse he had with Mr. Bennet, in relation to the money in Mr. Hiccocks's hands?

Elde. Some small time after I had given in my accompt, I saw Mr. Bennet; and he came up to me and said, That it was hard that he could not have any money from Mr. Hiccocks. He said, If he would pay him 2,000*l.* he would, or could pay the rest. I do not remember which.

Serj. *Probyn.* Whether he thinks he might have been able to pay it, if he had thought fit?

Elde. I know nothing of Mr. Bennet's circumstances; I am as little acquainted with him, as with any I must necessarily have correspondence with.

Serj. *Probyn.* My lords, we shall not trouble your lordships with any farther evidence on the 11th Article, in which we think we have sufficiently contradicted Mr. Thomas Bennet, as to the charge he hath made on the noble lord. As to the 12th Article, that principally relates to that part, that the purchase-money was paid out of the suitors' money; that is a fact that lies upon the gentlemen of the House of Commons to prove: it is impossible for us to prove a negative, they are to prove the affirmative, and they have not attempted to prove it by any witness, but by Mr. Thomas Bennet: now this being a fact that rests entirely upon Mr. Bennet's evidence, we submit, whether your lordships can believe any thing upon the credit of his testimony?

Com. Serj. My lords, We humbly apprehend the gentlemen of the House of Commons, by joining these two Articles together, did it as if they were there the same, and did depend upon one another: for unless the matter in the 11th Article be established, what was done on the 12th will be of no great significancy; for if persons of good ability, who are responsible and fit to answer the money that comes to their hands, be admitted to be Masters, it is not very material whether the forms of transferring in like transactions of that nature are strictly pursued or no; because the person being sufficient and responsible, will answer that money that is so detained. I choose to call them forms; for

with submission, if we examine them, they are forms, and nothing else: whether they take all the money from the preceding Master, or replace with the successors' own money what is detained by the predecessor, it comes to the self same thing, and are only different forms or methods of payment. Upon the whole, we apprehend, we have established our answer to the 11th Article; we think the other follows of course; and that there is no necessity to give your lordships any farther trouble on this head; but that the noble Earl will stand clear as to any accusation on these two Articles.

Then all persons concerned in the Impeachment, were directed to withdraw, and then the House adjourned to ten o'clock the next morning.

The Seventh Day.

Friday, May 14.

The Lords being seated in their House, the serjeant at arms made proclamation for silence; as also another proclamation, that all persons concerned were to take notice, that Thomas earl of Macclesfield now stood upon his Trial; and they might come forth in order to make good the Charge.

L. C. J. *King.* Mr. Serjeant Probyn, you may go on.

Mr. *Strange.* My lords, we who are counsel for the noble Earl within the bar, beg leave to proceed to his Defence against the 13th and 14th Articles of the Commons' Charge.

My lords, the facts contained in these two Articles, are laid to be done with a view of concealing a deficiency, that had happened in the office of Mr. Dormer, a Master of the Court; upon whose failure it is charged, that there was a total neglect, either to secure his person or effects, or to enter into any enquiry into the deficiency: and that although the state of this affair was fully known to the earl of Macclesfield, yet a declaration was afterwards made in open Court, that Mr. Dormer was only gone into the country to take the air; that he would return again in a little while, and all would be well: and that in farther prosecution of this endeavour to conceal the deficiency in Dormer's offices, a precarious and trifling composition was made with a creditor of Mr. Dormer's; and this without any notice to the suitors of the Court.

My lords, I shall, for my part, confine myself at present to these two Articles only, reserving any thing I may have to offer in general to the close of the defence; but before I proceed to observe upon the evidence brought to support the Charge contained in these two Articles, it will be proper to take notice to your lordships, that the honourable Managers for the House of Commons, have not offered one tittle of proof, as to the declaration pretended to be made, relating to Mr. Dormer's being gone to take the air, though they were pleased to enlarge upon it in their opening; but we have the satisfaction to know, that we are before your lordships, who are incapable of receiving any impressions from facts that are barely opened, and not proved; and therefore we rest assured, that no weight will be laid upon this circumstance, since no evidence has been produced in support of this part of the Charge.

My lords, as to the other matters contained in these Articles, we humbly hope to give your lordships abundant satisfaction in the noble Earl's behaviour on that occasion; that all the proper steps were taken to secure the interest of the suitors; and that, if there still remains any deficiency, it is not to be imputed to any neglect of the noble Earl within the bar.

Your lordships were pleased to observe, in the course of the evidence produced by the honourable Managers for the House of Commons, that Mr. Dormer's failure happened about Christmas 1720. My lords, it was about that time that Mr. Wilson, who had large effects of Mr. Dormer's in his hands, stopped payment; which unfortunately obliged Mr. Dormer, without the knowledge or suspicion of any one, to retire himself to Holland; and soon after, notice was given of it to Mr. Cottingham, who immediately acquainted the earl of Macclesfield with it.

Upon this, my lords, no time was lost; for the two senior Masters, Mr. Hiccocks and Mr. Rogers, were appointed to enquire into Mr. Dormer's affairs: his chambers were searched; the transfer of any stock in the public funds was stopped; and all endeavours used to procure a full satisfaction for the suitors of the Court: but, my lords, though these methods were very proper to prevent the embezzling of Mr. Dormer's effects, yet your lordships will readily perceive, that no steps, that could be taken whilst Mr. Dormer was on the other side of the water, could be in any degree effectual towards the payment of his debts.

And therefore, my lords, it was, that upon a proposal of Mr. Dormer's, to come over and discover his effects for the benefit of the suitors, in case he might be assured of his liberty, and not to be left to die in a gaol in his old age (as himself expresses it), the noble Earl within the bar was prevailed upon to give him those assurances; but upon condition, that he made a full discovery, and assigned over all he had.

Suppose, my lords, the proposal had not been complied with, would the suitors have been in a better condition than they now are in? The person of Mr. Dormer was out of reach; the stock could not be transferred without his presence or consent, nor were there any means to procure it under these circumstances, without some compliance on the side of the noble Earl. To say, my lords (and it was only said,) that Dr. Eddisbury's person was secured, is in my humbly apprehension, an argument of no weight in this case, since it does not appear, that he was out of the reach of the Court before his failure; and, I am persuaded, the gentlemen who mentioned this instance, don't desire to have it thought, that the noble lord, who then

presided, was capable of so great a breach of faith, as to deprive him of his liberty after a promise to the contrary: it must be submitted, therefore to your lordships, whether the committing a man in the power of the Court, was a precedent that could be followed in the case of Mr. Dormer.

My lords, to finish this part of the defence in not securing the person of Mr. Dormer, I shall beg leave only to observe, that though it is alleged in the Articles, and was insisted on in the opening and summing up, that application was made to the earl of Macclesfield for that purpose, yet the honourable Managers forgot to call any witnesses to the proof of that particular; which must therefore rest upon the denial in the Answer of the noble Earl.

My lords, it was insisted upon, that Mr. Dormer had not complied with his own proposal in discovering and delivering up his own effects; and for that purpose a witness was called to inform your lordships of a very great discovery that has been since made of a quantity of hops, that belonged to Mr. Dormer: Your lordships remember how very lamely they were proved to belong to Mr. Dormer, and how reasonable an account was given of their being kept so long in hopes of a better market. My lords, we shall not presume to entertain your lordships with any counter-proof of such a trifling evidence (as a learned Manager was pleased to call it), but beg leave to infer from thence, that it is evident a more than ordinary care was taken in looking after Mr. Dormer's effects, since after four years, which have past from the time of assigning his estate, a few musty hops are all that are discovered.

My lords, we humbly hope to make it fully appear to your lordships, that the complying with Mr. Dormer's proposal was the only means to procure any satisfaction: Had not Mr Dormer been induced to come over, his books and accounts would never have appeared: and had he died abroad, as he did soon after his coming home, I am persuaded the deficiency would have been much greater: And if a full discovery of his effects was not made (which, however, I apprehend there is no foundation to believe, after the hops are laid out of the case), the same will appear to be owing to his death, which happened in a short time after his return.

My lords, the several steps that were taken towards securing the effects of Mr. Dormer, must necessarily promulge his failure in some measure: the chambers could not be searched; there could not be caveats entered in the books of all the public funds; nor could Lockman be cautioned against expecting any more out of the effects of Mr. Dormer, without making some noise, and giving people notice: And, therefore, when we have made out these facts, I humbly hope, the noble Earl will stand acquitted of any design to conceal the state of Dormer's office, in prejudice of the suitors; but that, considering all the circumstances of the case, he took the wisest and properest course to secure as ample a satisfaction for the suitors, as it was in his power to do.

My lords, the 14th Article, relating to the composition with Wilson, will give me no occasion to take up much of your lordships' time. It is called a precarious and trifling composition, and was aggravated in the opening, and so, of course, in the summing up, by a matter which they failed in the proof of, that Wilson was suffered to compound this debt, though he paid others their whole demand with interest.

My lords, the witness, who was called to prove this, did by no means come up to what was opened: He did indeed say, that he was informed, that Wilson had paid some persons their whole debt; but he at the same time acquainted your lordships, that these were small debts; and that he did not pay them out of his own effects, but from a supply administered by a friend, only to give him a credit at his setting up again; and the unfortunate end of this man (of which I am just now informed) is an unanswerable proof of his inability to pay the whole.

My lords, as a farther argument to prove the reasonableness of this composition, I beg leave to appeal to another part of the evidence produced on this Article by the Managers of the House of Commons; whereby it appeared, that Mr. Wilson's books were perused by two Masters, and himself was put upon his oath; and that he swore, the composition he then offered, was all he was then able to make; which I humbly submit to your lordships as an answer to what an honourable Manager was pleased to object, when he insisted, that there ought to have been a commission of bankruptcy against Wilson, that thereby his effects might have been discovered upon oath.

My lords, there were many other creditors of Mr. Wilson's, besides Mr. Dormer, who might have applied for a commission of bankruptcy, if it would have been for their advantage; but, as every body is acquainted with the great expence and delay of such a procedure, I believe they will be thought to have taken the wisest course: Here was all the benefit of a commission, by the putting Wilson upon his oath, and none of the expence and delay that attended such an enquiry.

My lords, another thing opened and not proved, is, that, at the time of this composition, Poulter, who was Wilson's debtor, was worth nothing: It is true, my lords, he was afterwards in execution, and escaped; but if we make it appear to your lordships, that at the time of the composition he was a visible person, and not suspected, I humbly hope, whatever has happened subsequent to the composition, will be no ingredient in shewing it to have been a trifling and precarious one at the time of making it.

My lords, I beg leave humbly to observe, that the honourable Managers have not been pleased to instance how the suitors would have been in a better condition, in case this composition had not been made: Could they have

shewn your lordships, that if part of the debt had not been taken, the whole might have been obtained, I must confess, there would have been some reason to have called this a trifling composition; but since nothing of that nature has been attempted, I must submit the whole transaction upon what I have already offered, to have been a transaction most for the advantage of the suitors, considering the circumstances that attended this composition.

My lords, an honourable Manager who spoke second upon this Article, was pleased to say, That by this composition the suitors were tied down to a certain loss of half their demand. My lords, I humbly apprehend the consequence to be directly otherwise; and that the suitors are not tied down at all: As they were no parties to the composition, they were not bound by it; nor is Mr. Wilson, by this composition, in any degree discharged as to the suitors of the court; so that if Wilson be able to pay the whole, he is still as liable to the demands of the suitors, as if this composition had not been made; and if this be so, it will be to the advantage of the suitors, that they had no notice, which, however, I apprehend was in the nature of the thing impracticable.

My lords, it was insisted upon, that the petitions, and orders, and reports on this occasion were in an unusual and clandestine manner; and a certificate has been read to your lordships to prove, that they were never filed and registered, as is usual in other cases: But do they, my lords, pretend to say, that this was by the order, or with the privity of the earl of Macclesfield? The business of a Chancellor is to make orders; but I never yet heard it was his duty to see them drawn up and registered; and therefore if there was any thing unusual in this, it is not to be imputed to the neglect of the noble Earl, unless that it was proved to have been by his express direction.

My lords, it has already appeared, that this composition, and the proceedings upon it, did not proceed from the noble Earl; but were proposed to him; Mr. Edwards did acquaint your lordships, that it was himself, who first proposed it to the Earl, after having advised with Mr. Hiccocks, who put him into that method.

This, my lords, is the nature of our defence against the 13th and 14th Articles of the Commons' Charge: We humbly hope the several steps that were taken, will appear to have been for the benefit and advantage of the suitors, and with no other view, than the securing them their whole demand; that the composition so much complained of, was given into only as means towards the attaining that end, and could in no event be prejudicial to the suitors of the Court, as the gentlemen of the House of Commons would represent it to your lordships.

Mr. *Dormer Parkhurst* sworn.

Serj. *Probyn*. My lords, we desire Mr. Parkhurst may be asked, what conversation passed between him and Mr. Dormer previous to his going abroad, and upon what occasion he was obliged to go abroad?

Parkhurst. Mr. Dormer came to me about the latter end of November, 1720, at my chambers. I had then somebody else with me; upon that account he said nothing to me, but desired I would come next morning early to him. I went, and when I came to him (he lived then in chambers in Lincoln's-inn), he shut the door, and told me, he had a thing of great importance to communicate to me in relation to himself; and then told me, he designed to go abroad: He said Mr. Wilson, his goldsmith, the day before had been with him (this was on a Sunday morning, and he had been with him the Saturday before) and had acquainted him, that the Monday following he should be obliged to shut up shop, and stop payment: He had a great deal of money in his hands, and he was afraid, that as soon as it was known, that Mr. Wilson was unable to pay, the solicitors, and practisers belonging to the Court, who knew he kept Mr. Dormer's cash, would immediately be alarmed; and that application would be made thereon to my Lord Chancellor; and he believed, that the first thing to be done, in relation to himself, would be to confine him; and that there would be an order for his being committed; and therefore, to prevent that (for he could not live a week without air and liberty), he was resolved to withdraw himself, and retire to some place or other. Upon this, I expressed a great deal of concern, and endeavoured to persuade him against it: I desired him to make his circumstances known to my Lord Chancellor and the Masters: He said No; he was sure the consequence would be his confinement, and was come to a determination with himself to secure his person; his uneasiness was from the fear that he should be confined; but he would leave every thing fairly behind him, and hereafter come over and obey any order from my Lord Chancellor; but the first thing he would do, he was resolved to withdraw, to secure himself from being confined.

Serj. *Probyn*. What happened after he was gone abroad; and what notice was taken of it?

Parkhurst. In a little time after this, I understood he had put his resolution in execution, and had withdrawn himself. He had desired me, that I should not mention it to any body; and gave out by his clerk, that he was gone into the country. I did, after this, in about three weeks, receive a letter from him, that he was then at Rotterdam; and there was a letter inclosed, which he desired me to shew to some of the Masters. I think I shewed it to Mr. Rogers; afterwards, according to his directions in the letter to me, I carried it to Mr. Cottingham. It was directed to Mr. Cottingham, who was then secretary to my Lord Chancellor: I carried the letter to him, and left it with him.

Serj. *Probyn*. If you can, recollect what were the particulars of that letter, the contents of it, relating to any terms of his coming over again.

Parkhurst. It is a great while ago; I have but a faint remembrance of it; but I think it was much to the same purpose with what he communicated to me at first, after he had acquainted me with the unhappy affair, as hath been mentioned. He said he had a great sum of money in Mr. Wilson's hands; and when he found Wilson unable to pay, he was apprehensive of an immediate confinement, which he could not possibly bear; therefore he had withdrawn himself; but that he had left his own estate entire behind him, and every thing relating to the suitors; and he was willing to come over to give an account of the state of the office, and of his own estate; and he was willing to make over all his own estate, to answer the deficiency of the office, as far as it would go; and to do every thing the Court should think fit to order him, provided he might have his liberty both before and after: He desired he might not be confined, and he would do every thing that the Court would order him to do, or should be desired of him, as much as if he was confined.

Serj. *Probyn.* We desire he may be asked, if he knew how it was that Mr. Wilson came to have so much of Mr. Dormer's effects in his hands, and upon what account?

Parkhurst. I did not know, till this affair happened of Wilson's failing, what money he had in his hands belonging to Mr. Dormer. I used to see Mr. Wilson with him; I knew Mr. Wilson had cash of his in his hands; but afterwards, by way of justification of himself, for losing so much money, I heard him say it was an unlucky accident, he had a considerable sum of money paid into his hands, by order of Court, and a considerable sum, which came in upon the land-tax, and he did not know at that time, what to lay it out in; the stocks were so high and precarious, he would not buy any; and he thought Wilson's hands as safe a place as any at that time; he could not keep it by him in his chambers, and he was going into the country for three or four weeks; and when he saw things were settled, then he would lay it out: But when he came back to town, he found Mr. Wilson in those declining circumstances. This was after he returned from Holland. I knew nothing before of this, nor that he had any great sum of money in his hands.

Serj. *Probyn.* He saith that he did propose that he would come over and make a discovery of, and deliver up his effects, in case his person was secured; now I desire he may recollect, before he did come over, if he knew of any steps taken to secure his effects; and whether any thing in his chambers was taken care of, and by whom?

Parkhurst. I can give but one instance of it; that is Mr. Rogers, a Master in Chancery, came to me one morning, and desired me, upon the account of being a relation, for I was no otherwise concerned, that I would go along with him to look into Mr. Dormer's chambers, to see what there was, what securities, or any thing of that nature belonging to the office. I remember we did find several things, several land-tax tallies which Mr. Rogers gave an account of. I don't know what the number was.

Serj. *Probyn.* Who took possession of them?

Parkhurst. Mr. Rogers, the Master in Chancery.

Serj. *Probyn.* By whose directions did you understand that Mr. Rogers took this care?

Parkhurst. I understood it was by the direction of the Court. He came to me, and desired me to go along with him to see that no person meddled with any thing but what belonged to the suitors; and he took them and locked them up in his closet or scrutore.

Serj. *Probyn.* My lords, we have done with this evidence.

Mr. *Plummer.* I think he says, the reason of Mr. Dormer's having so much money in the hands of Mr. Wilson, was, that there was a great sum of money come in upon the land-tax: I desire to know, if Mr. Dormer left this money dead in the hands of Mr. Wilson, or if he had any interest for it?

Parkhurst. I know nothing of that. By way of justification, he said, it was unlucky he had so much money paid into his hands at that time; times were so precarious, he did not know how to lay it out.

Serj. *Peng.* I desire he may be asked, whether Mr. Wilson did not usually keep Mr. Dormer's cash, and the cash of the office?

Parkhurst. I believe he did, I knew but few instances of it.

Serj. *Pengelly.* Whether he never heard him declare that Mr. Wilson paid him interest?

Parkhurst. I never heard him declare he did: he never spoke to me about it particularly.

Mr. *Lutwyche.* I desire he may be asked, Whether he can inform your lordships, how long Mr. Wilson had been banker to Mr. Dormer?

Parkhurst. I can't say exactly how long: I believe some years.

Com. Serj. If the gentlemen have done with this witness, we beg leave to call another, to prove what care was taken to stop those effects that were in the public funds.

Mr. *John Elphinstone* sworn.

Com. Serj. My lords, we desire that Mr. Elphinstone may inform your lordships, what he knows of any orders or directions given, in relation to the effects of Mr. Dormer that were in the public funds, and by whom those directions were given?

Elphinstone. My lords, I have been to search the books of the Bank, the South-Sea, and East-India Companies, to see what stock Fleetwood Dormer, esq. one of the Masters of the Court of Chancery, had in the books of those Companies, and what orders there were for stopping Mr. Dormer's transferring such stock. My lords, I went first to the Bank, and searched a book of that Company, called a Ledger, where Mr. Dormer's accompt was stated by way of debtor and creditor. I found

in that book, a memorandum written over Mr. Dormer's accompt in red letters, as follows: "Q. No Transfer." I likewise enquired, if there were any orders with the Court of Chancery, for stopping the transfer of such stock? I was told by the clerk, that he knew of none. I enquired of the clerk at the Transfer-office, if there was any order of the Court of Chancery, for transferring Mr. Dormer's stock to Mr. Edwards, the succeeding Master? After some search, he brought me an original order, signed Parker, C. dated 11 July, 1721. I have a copy of that order in my hand, whereby it appears, that all the stock and annuities, in the name of Mr. Dormer, were ordered to be transferred to Mr. Edwards, on the 12th of July 1721, viz. the day after the date of the said order. I found in the transfer book of that company the sum of 3,393*l.* 16*s.* transferred by Mr. Dormer to Mr. Edwards, and Mr. Edwards's acceptance of the same. This is a copy of the original order. I afterwards went to the South-Sea House; I searched the book of that company, and in the book marked letter D. N°. 6, fol. 430, where Mr. Dormer's accompt is stated by way of debtor and creditor, I found a Memorandum over Mr. Dormer's accompt, which is as follows; "Stock not to be transferred without order from the Court of Directors (he being failed,) or from the Court of Chancery." I also searched the transfer-book of the said company; and I found in book N°. 5, page 86, that on the 12th day of July, 1721, 2,251*l.* 14*s.* South-Sea stock was transferred by Mr. Dormer to Mr. Edwards, and under the transfer I saw Mr. Edwards's acceptance; Mr. Dormer signed the transfer, and Mr. Edwards signed the acceptance. I enquired if there were any orders for stopping Mr. Dormer's stock from being transferred. I found no such order, nor any order for transferring the stock that was transferred; and the reason which the clerk of that office gave, was, That upon the unhappy turn of the affairs of that company, several of the clerks being discharged, and many books and papers being destroyed, lost, or mislaid, and the rest in the utmost confusion, rendered it impossible to find any such paper at this distance of time. I went likewise to the East-India Company; but I could not find upon those books any stock belonging to Mr. Dormer, or that he had any interest in that company.

Mr. *Strange*. I beg leave to take notice of one thing he says, relating to the words expressly entered in one Ledger-book; it stands that Mr. Dormer should not transfer any stock, he being failed.

Elphinstone. Yes, the Memorandum entered in the South-Sea Ledger-book is as follows: "Stock not to be transferred without order from the Court of Directors (he being failed), or Court of Chancery;" the words, "he being failed," are in a parenthesis, and then follow the words, "or Court of Chancery."

E. of Macclesfield. Who was then governor of the Bank?

Elphinstone. I think Mr. Hanger was.

Serj. *Probyn*. Were the entries dated?

Elphinstone. There was no date to any of the Memorandums; they are wrote just over Mr. Dormer's account, and under a line drawn to separate Mr. Dormer's account from another person's.

Serj. *Probyn*. Was that before the transfer made to Edwards?

Elphinstone. There is no date to the Memorandum for stopping the transfer of Mr. Dormer's stock; but it must be before the transfer.

Serj. *Probyn*. But the entry in the books, was it precedent or subsequent to the transfer?

Elphinstone. When I searched for the account, I found the account and the Memorandum for stopping the transfer of the stock, placed over it, in a book called the Ledger, and when I searched for the transfer of the stock, I found that in the transfer-book, which is a different book.

Serj. *Probyn*. What transfer-book was it?

Elphinstone. It was the transfer-book No. 5, in page 86, where I found Mr. Dormer's transfer, and Mr. Edwards's acceptance; but the Ledger is quite a different book. It was in the Ledger marked D, that I found the Memorandum for stopping the transfer of Mr. Dormer's stock over his account; but I could not tell what day of the month it was entered; there were promiscuous dates in the year 1720, 21, 22, 23, and 24, to several articles of that and other accounts, but no date to the Memorandum at the head of his account. I took this copy of it, which I have in my hand.

Mr. *Lutwyche*. I desire to ask one question, which, indeed, is to explain what he mentioned concerning an order, that I think he takes to be signed by my Lord Chancellor. I desire to know the date of it?

Elphinstone. It was a loose order brought to me, dated 11th July, 1721.

Mr. *Lutwyche*. Who brought it?

Elphinstone. It was brought to me by a clerk that belongs to the Transfer-office at the Bank.

Mr. *Lutwyche*. Was that original order left in the book?

Elphinstone. No, my lords, I saw no book of orders; it was a single order brought to me.

Mr. *Lutwyche*. You say there was an order signed Parker C. was there any such order drawn up by the Register of the Court?

Elphinstone. I know nothing of its being drawn up by the Register. I saw Parker C. signed to an order; and I believe it was the noble Earl's hand.

Serj. *Pengelly*. He hath a copy of it; I believe it is proper to put it in, or that it may be read.

Mr. *Lutwyche*. Mr. Elphinstone may read it to your lordships.

Elphinstone reads. Martis 11 July, 1721, "I do order, that all the Bank stock and annuities therein subscribed, belonging to Fleet-

wood Dormer, esq. late one of the Masters of this Court, be by him forthwith transferred to Henry Edwards the succeeding Master.

"PARKER C."

"To the Governor, Deputy-Governor, and Directors of the Bank of England."

Serj. *Pengelly.* We desire he may be asked, Whether he heard any thing of Mr. Dormer's being gone to take the air?

Elphinstone. No, my lords, I never did, upon my oath.

Serj. *Pengelly.* Whether he did not hear the earl of Macclesfield make a declaration to that purport?

Elphinstone. I do not remember that the noble lord ever made any such declaration.

Serj. *Pengelly.* He mentioned several orders he found in the books of the Bank, as I apprehended him; whether was there any other order under my lord Macclesfield's hand?

Elphinstone. No, I saw but one original order signed by the noble Earl, of which this is a copy in my hand.

Mr. *Lutwyche.* This was an order under my lord's hand a considerable time after: I desire he may be asked, Whether he hath heard of any order directed to the governor, deputy-governor, &c. of the Bank, and signed by the Chancellor, and that original order left there?

Elphinstone. My lords, I would be very cautious of saying any thing that I do not remember; but I do remember something of a discourse of an order given for stopping of Dormer's stock and effects about the time of Mr. Dormer's absconding; but when it was I can't tell.

Mr. *Lutwyche.* He did not understand me: my question is, whether or no he hath ever heard of any order directed to the governor, &c. of the Bank, and signed by the Chancellor, and that original order left there?

Elphinstone. No, my lords, I don't say I heard of any other order signed by my Lord Chancellor, and directed to the governor, &c. of the Bank; but I heard an order was given by my lord to stop Dormer's stock.

Mr. *Lutwyche.* I only ask, Whether in this, or any other instance, my Lord Chancellor made orders to the Bank, to be left there?

Elphinstone. I don't know what orders are made; it was out of my province; I had nothing to do with that; my business was quite another thing.

Serj. *Probyn.* I would beg leave to take notice of one observation that has been made on the evidence given in relation to the order of the late Lord Chancellor, as though it was unusual to direct any in that manner to the Bank; but to that I beg leave to answer, that this was not an order of the Court; but only a particular direction, which he in his private capacity sent to that company, out of his great care to secure the effects of the suitors; and this, I apprehend, fully clears him of the objection made to him of neglect to do it in his judicial capacity.

Com. Serj. Your lordships cannot choose but observe, that this very thing implies some caution taken, that these effects of Mr. Dormer's should not be transferred without the privity of the great seal: this order, we apprehend, was for that purpose; and to make this plain, we shall shew, that Mr. Cottingham went from my Lord Chancellor about this matter.

Mr.. *Cottingham* called.

Serj. *Probyn.* We desire Mr. Cottingham may be asked, how he came to have notice, and from whom, of Mr. Dormer's withdrawing himself; and what care was taken to secure his effects?

Cottingham. Soon after Christmas, 1720, to the best of my remembrance as to the time, Mr. Parkhurst, Mr. Dormer's nephew, came to me, and told me, his uncle, Mr. Dormer, had withdrawn himself into Holland; and the reason was, upon account of his having left money and effects belonging to the suitors, in Mr. Wilson's hands, and Mr. Wilson had been very unfortunate in the South Sea year, and was likewise gone off. I acquainted the Earl of what passed. The Earl directed me to attend the two senior Masters, Mr. Hiccocks and Mr. Rogers, and consider what was proper to be done on that occasion. On consideration, we agreed, that it was necessary to get Mr. Dormer over.

We then considered, that it was not possible to have him over, unless he was secure of his liberty. A proposal was made to the Earl, that in case he came over, he should have his liberty: the Earl agreed to it. In the mean time, to the best of my remembrance, orders were given for searching of his office, and securing what effects and papers were there. The Masters told me that, pursuant to these directions, they had searched his office, and locked up what they found there; but his effects there were of very little value.

The next step the Earl took was, he directed persons to go to the Bank and the South-Sea House, to stop the transferring of any stock or effects in his name.

In April following, when Mr. Dormer returned, he came late to me one evening, and asked me, if the letter writ by the Master was writ by the Earl's direction? I told him, Yes. He then asked me, if the Earl had promised his liberty? Otherwise he would be gone again.

I told him, the Earl had promised him his liberty, if he would make a full discovery of all his effects upon oath; and make over all he had to the two senior Masters for the benefit of the suitors of the Court; and assist them in getting in every thing that belonged to him.

He said, these conditions he readily submitted to, and would attend the Masters accordingly. I spoke to Mr. Rogers, to know whether he would have an order in form to examine Mr. Dormer upon interrogatories; and that, if he would, I would prepare one, and get it signed.

He told me, it was not necessary; and that they thought it was best to get the estate and effects in the first place, before that should be done; fearing if Mr. Dormer was severely dealt with, he should run away, and an order might be had afterwards, if necessary. I forgot to tell your lordships one circumstance: sometime in the summer following, either in July or August, I happened to dine one day at the Blue-Posts, behind Lincoln's Inn, Mr. Dormer came to me with tears in his eyes; he cried bitterly, and said, That the Masters had stripped him of all he had in the world, and begged I would intercede with the Earl to allow him something. I desired him not to insist upon it; for his effects, as I was informed, were not sufficient to pay his debts, and he knew well, that the Earl could not give away the effects of the suitors; it was out of his power.

Mr. *Plummer*. I think you say, Sir, that Mr. Dormer failed, by leaving his money and effects in Mr. Wilson's hands; I desire to ask him, what he means by his effects?

Cottingham. The money and effects belonging to the suitors of the Court.

Mr. *Plummer*. And you told my lord of that?

Cottingham. Yes, I told my lord what Mr. Parkhurst had mentioned of the money and effects of the suitors of the Court being left in Wilson's hands.

Com. Serj. I desire he would inform your lordships, whether or no, upon this occasion and transaction, he applied to the Masters to make up this deficiency of Mr. Dormer's?

Cottingham. As to the deficiency of Mr. Dormer, I always apprehended and understood that the Masters would make good that deficiency, Mr. Lightboun excepted, who always declared, he would do nothing towards it, unless it were put on another foot.

Com. Serj. I desire he may be asked, whether he gave any such information to the earl of Macclesfield?

Cottingham. I did so; I told the Earl of it; and to the best of my remembrance Mr. Hiccocks and Mr. Rogers; my lords, I won't be positive, but I think Mr. Hiccocks and Mr. Rogers did order me to wait upon the Earl, and let his lordship know that the body of the Masters had undertaken to make up the deficiency; I do think so, I will not be positive of that, I think it was so.

Com. Serj. I desire he may inform your lordships, if he knows how it came to pass that Mr. Dormer had money in Mr. Wilson's hands?

Cottingham. Mr. Parkhurst told me, and I think Mr. Dormer likewise, but of that I am not certain, that Mr. Dormer had left the money in his hands when he went into the country in the long vacation.

Mr. *Onslow*. I desire he may be asked, what were the words that Mr. Rogers and Mr. Hiccocks said to him when he apprehended the Masters would make good the deficiency.

Cottingham. I think it was what I told your lordships, that the body of the Masters would make good the deficiency; I do not, I cannot swear that positively.

Mr. *Onslow*. Did any other of the Masters tell you so?

Cottingham. Mr. Godfrey told me, I am positive of this, that Mr. Godfrey told me that the body of the Masters would make good the deficiency; I must except Mr. Lightboun.—I have heard Mr. Edwards say, that he would never have paid his 500*l*. if he had not apprehended that it would have been made good.

Com. Serj. This makes it necessary for us to ask another question, and I desire he may be asked, though he doth not remember the particular words, yet whether that induced him to believe that they intended so to do?

Cottingham. It did.

Com. Serj. Whether upon this belief he did inform the noble earl that they would make good Mr. Dormer's deficiency?

Cottingham. I did. I told the noble earl so, and that his lordship needed not to be uneasy, they would make it good, and I always apprehended, I always understood they would make it good.

Mr. *Lutwyche*. I desire he may be asked, whether the deficiency of Mr. Dormer was ever stated so as to know how much it was?

Cottingham. No.

Mr. *Lutwyche*. Did they agree to make up the deficiency when they did not know how much it was?

Cottingham. I heard some of the Masters say at first, that it was 17,000*l*. or 18,000*l*. afterwards they said 20,000*l*. and then 22,000*l*. and of late it comes out to be 26,000*l*.

Mr. *Lutwyche*. If I understand Mr. Cottingham right, he speaks of several Masters, I desire to know whether he means all, except Mr. Lightboun? I desire to know whether they all singly promised?

Cottingham. Singly, as I remember; Mr. Edwards can tell I was at a meeting with them at the tavern, I think they said singly.

Serj. *Peng*. I desire he may be asked, whether this discourse with the Masters about paying this deficiency was absolute, or upon some particular terms or conditions of paying the money?

Cottingham. Mr. Edwards told me that they would make good the deficiency, provided they continued on the old foot as usual.

Serj. *Pengelly*. That is to have the disposal of the money, the money to be in their hands?

Cottingham. Yes.

Mr. *Lutwyche*. I desire to know, whether you acquainted the earl of Macclesfield with this?

Cottingham. No, this was but lately that Mr. Edwards told me that. It was, I believe, in November or December last.

Mr. *Lutwyche*. Did none of the other Masters acquaint you so?

Cottingham. No, I don't remember any other Master did.

Mr. Lutwyche. I desire to ask you, whether you ever heard what interest Mr. Wilson allowed to Mr. Dormer?

Cottingham. In December last, when the accompts were before the judges, the Earl told me that Mr. Wilson's composition was complained of, it was said, that Mr. Wilson had paid 20s. in the pound, and ordered me to talk with Mr. Wilson; and accordingly I did see him, and blamed him for imposing upon the Masters in the composition he made with them, when he had paid other creditors their whole demand; he denied it.

Mr. Lutwyche. That is not the question; what interest did Mr. Wilson allow Mr. Dormer for the suitors' cash?

Cottingham. I am going on to that part. Mr. Wilson said to me, Why is all the blame laid upon me? I allowed Mr. Dormer very large interest for his money: I could have set aside his debt upon the score of an usurious contract; I was resolved I would not do it; I would shew myself to all the world to be an honest man; I gave my creditors all that I had, what would they have more?

Mr. Lutwyche. Whether he mentioned ten per cent. or no?

Cottingham. No, he did not, but he said he had given large, high interest, and the Court had had as much as his other creditors.

Com. Serj. When was this discourse?

Cottingham. It must have been in December last, when the judges were enquiring into this matter, because he told me Mr. Edwards had been with them about the composition.

Serj. *Probyn.* Recollect what was said upon this discourse, whether he said that the Court or the Masters had as much as any of his other creditors?

Cottingham. He told me, I am an honest man, the Masters had as much as my other creditors, what would they have more?

Serj. *Probyn.* It is our misfortune we can't produce Mr. Wilson here, we are deprived of his evidence, which would have been very material, by his death; we are told he has very lately shot himself.

Cottingham. He was very poor, I always looked upon him to be an honest man; he told me at the same time, I forgot to tell your lordships, if Mr. Poulter could be but delivered up, he should be very easy; he was sure he was in circumstances to pay him.

Com. Serj. My lords, if the gentlemen have done with this witness, we desire to call a witness or two in relation to the 14th Article, to shew the credit of Poulter when his debt was assigned. We apprehend that a little evidence will serve to clear up the innocence of this noble Earl on this occasion: the great concern the noble Earl had to make up this deficiency of Mr. Dormer, made him with the best of his knowledge and power apply thereto; a little evidence will make it appear, that however unfortunate it was in the consequence, he did it to make the most he could for the suitors of the Court.

Mr. *Hunt* sworn.

Com. Serj. My lords, we call this witness to prove the two judgments, the one against Poulter, to shew that there was a real debt due from Poulter to Wilson; the other is a copy of a judgment by Wilson against the marshal of the King's-bench, for the escape of Poulter.

Hunt. My lords, I examined these two copies of judgments with the records in the Court of King's-bench. They are true copies of the judgments.

Com. Serj. I desire he may be asked, whether he was the attorney for Mr. Wilson?

Hunt. I was the attorney for Mr. Wilson in that against Machen, and entered up the judgment in the other.

Com. Serj. Is it your lordships' pleasure that the judgment should be read at large?

Serj. *Probyn.* Read only a word or two of the judgments, the names of the plaintiff and defendant, the money demanded, and the sums recovered.

[*Clerk* reads the beginning and ending.]

"Memorandum quod alias, scilicet Termino Sancti Hilarii ult' præterit' coram Domino Rege ven' Willielm' Wilson versus Edvardum Poulter—Ideo considerat' est quod prædict' Willielm' recuperet versus præfat' Edvardum Poulter damna sua, quæ quidem damna in toto se attingunt ad octodecim mille septingent' et sexagint' libras duodecim solid' et quinque denar'."

Serj. *Probyn.* The first is against Poulter.

Mr. Lutwyche. Look when the judgment was signed.

Hunt. It was signed 22 December, 1721.

[The Judgment read against Machen.]

"Placita coram Domino Rege apud Westm' de Term' Sancti Michaelis, undecimo Georgii. Memorandum quod Willielm' Wilson—protulit—billam—vers' Richardum Machen—de placito debiti—quod reddat ei octodecim mille septingent' octogint' et un' lib.—Ideo considerat' est quod præd' Willielm' Wilson recuperet, &c."

Judgment signed 27 Nov. 1724.

Com. Serj. If your lordships please he may be asked, if he knows of any offer made by Poulter for a composition, and what sum of money was offered, and how Mr. Wilson behaved himself on that occasion?

Hunt. I don't know of any composition offered, of my own knowledge; I have heard the present marshal of the King's-bench say, there was 1,000*l.* offered; but I had orders from my client, if any offer were made to me, not to accept it, but to refer the person who made it to him.

Com. Serj. As Mr. Wilson is dead, I desire Mr. Hunt may be asked, whether Mr. Wilson gave any reason for that order not to compound with him?

Hunt. Mr. Wilson hath often said that it was his opinion Mr. Poulter was able to pay him.

Com. Serj. We have done, my lords, with this witness.

Serj. *Probyn.* My lords, we beg leave to call a witness to shew that at this time Mr. Poulter had the reputation of being a man of substance, and an honest man.

Mr. *Peter Gandy* sworn.

Serj. *Probyn.* My lords, I desire Mr. Gandy may give your lordships an account, whether Mr. Poulter had not the reputation of being a substantial man about the year 1722 or 1723?

Gandy. Mr. Poulter always lived in good reputation, and was reputed to be an honest man; he lived at Hackney, he told me he purchased 6,000*l.* South Sea stock, which cost him 36,000*l.* and transferred it to Mr. Knight, and Mr. Knight gave him nothing for it.

Serj. *Probyn.* I desire to ask you, whether he was a substantial, honest man?

Gandy I believe he was; he always bore an extraordinary character, I believe I might summon all Exchange-alley, and they would say the same; he was reputed to be worth a great deal of money, and a very honest man.

Mr. *Lutwyche.* At what time was this that he was thought a man of substance?

Gandy. When he lived at Hackney.

Mr. *Lutwyche.* After he was arrested?

Gandy. Yes.

Mr. *Lutwyche.* Will you say after he was arrested he was a substantial man?

Gandy. No, my lords, I do not say he was; but he was generally reputed to be so.

Mr. *Lutwyche.* Whether at the same time you mention that he told you the circumstance of transferring stock to Mr. Knight, that was not given as a reason for his deficiency?

Gandy. He said, he had been able to pay Mr. Wilson every farthing, if Mr. Knight had not gone away.

Mr. *Lutwyche.* That is what Mr. Poulter told Mr. Gandy.

Serj. *Peng.* I desire he may be asked when Poulter was first known to be in a failing condition?—*Gandy.* I don't know.

Serj. *Peng.* When was he arrested?

Gandy. I don't know; he told me he should have been able to have paid Mr. Wilson, if Mr. Knight had not gone away.

Serj. *Peng.* Did he give you that as a reason why he could not pay Mr. Wilson?

Gandy. Mr. Knight not paying him, he said he could not pay Mr. Wilson.

Serj. *Peng.* Was that the reason?

Gandy. Here is another gentleman will tell you he was employed to make a composition with Mr. Wilson, and he can tell you more.

Mr. *Onslow.* What was Poulter's profession?

Gandy. He was a servant to Mr. Stroud

Mr. *Onslow.* What is Mr. Stroud?

Gandy. Mr. Stroud is a sworn broker.

Mr. *Onslow.* I desire to know what profession this person is of?

Gandy. I transact in Exchange-Alley as a broker.

Mr. *Lutwyche.* Did not Mr. Poulter transact as a broker too?—*Gandy.* Yes.

Dr. *Sayer.* We are not now upon the point what he was really worth at that time, but what his reputation and character was, and therefore we desire to know what that was, whether he was not looked upon as a substantial man?

Gandy. He bore a good character.

Mr. *Strange.* What was his character as to his circumstances at that time?

Gandy. His character was then very good, and so continued till he was put in prison.

Mr. *Strange.* Where is he now?

Gandy. He is at Rotterdam.

Mr. *Scott* sworn.

Com. Serj. I desire that Mr. Scott may inform your lordships, whether he knew Mr. Poulter, and what his character and reputation was, as to substance?

Scott. Mr. Poulter I had been acquainted with a great many years; I looked upon him to be a very honest man; and in the year 1720 he transacted abundance of business, and I did a great deal of business for him and some other gentlemen at that time, as a scrivener. In the year 1720, upon the fall of the stocks, he came and told me he was ruined by it, and begged of me to assist him. He told me at first he had some accounts depending with Mr. Wilson.

Serj. *Peng.* I desire he may repeat it, where he told him, and when?

Scott. About December 1720, before Mr. Knight went away, he said he had large accounts with Mr. Wilson and that he was utterly ruined, because he said he had transferred 6,000*l.* South Sea stock to Mr. Knight, which cost him 40,000*l.* or better, and if he could not get it of Mr. Knight, he must be ruined. He told me I was acquainted with several gentlemen of Mr. Wilson's acquaintance, and desired me to speak to him or them about this matter.

Sometime after, Mr. Wilson's agents, Mr. Ashton, I think, and one Mr. Newton, sent to Mr. Poulter, and desired a meeting on the behalf of Mr. Wilson. I went on the behalf of Mr. Poulter, and carried a friend with me; we met at the Crown-tavern over against St. Clement's church, and we told them how Mr. Poulter was served; that Mr. Knight had so much stock of his without any manner of consideration, as Mr. Poulter had told us; that Mr. Poulter was willing to do any thing they could expect. Some considerable time afterwards, I heard Mr. Poulter had been arrested, and he desired me, as being acquainted with Mr. Wilson, to go to Mr. Wilson, and see if I could make up the affair; he apprehended that his bail would surrender him: whereupon I went to Mr. Wilson, and told him, that Mr. Poulter protested to me he was worth but 3,500*l.* or thereabouts, and that he would en-

deavour to get friends to make it up 4,000*l.* if Mr. Wilson would accept it. I was with Mr. Wilson several times about this matter, but he would not accept it.

Serj. *Peng.* Did he give any reason why he would not accept it?

Scott. He said he looked upon Mr. Poulter not to be an honest man, and that he could pay more; I said he had better take that than keep him in prison.

Com. Serj. Notwithstanding these private intimations of his disability, I desire to know what was his general character as to his circumstances?

Scott. He was looked upon to be a very honest man, and in good circumstances; he hath been trusted with thousands and thousands of pounds.

Serj. *Peng.* I desire he may be asked, whether the money, the 24,000*l.* Wilson lent to him, was not for stock-jobbing, for him to traffic with in the alley.

Scott. I know nothing at all of that.

Serj. *Peng.* Whether he hath not declared so?

Scott. No, I know nothing of that; whenever I was in company with Mr. Wilson he was always very shy, and would not speak freely.

Mr. *Plummer.* I desire he may be asked, whether in June or May 1720, he looked upon Mr. Poulter to be a good man?

Scott. Mr. Poulter, in April or May 1721, told me his circumstances, and desired me to go to Mr. Wilson to meet those gentlemen, and to treat with them; but every body then, except four or five persons to whom he had made known his circumstances, reputed him an honest and a substantial man.

Com. Serj. I desire he may inform your lordships, in May 1721, what his general character was, or what was generally thought by other people of him, without relation to his own particular knowledge?

Scott. He was looked upon as a man of substance, and a very honest man.

Mr. *Sandys.* I desire he would explain himself; whether he was looked upon at that time by himself to be a sufficient man, and able to answer the demand of Mr. Wilson?

Scott. He had told me a reason to induce me to have but an ill opinion of his ability, that he had transferred 6,000*l.* stock to Mr. Knight, which cost him 40,000*l.* and upwards.

Serj. *Peng.* Whether Mr. Poulter at that time went on dealing in the way of business as he did before?

Scott. No, I believe he did not at that time: I believe, in 1720, his business was done, and he thought himself worth a great deal of money.

Dr. *Sayer.* Whether in the year 1720, he was not looked upon to have got a great deal of money, and for that reason to have quitted his business.

Scott. It was then taken so; he was then looked upon as a man of great substance: there were not above five who knew his circumstances to be otherwise; he was generally looked upon then to be a man of substance.

Mr. *Lutwyche.* It is a very surprising way to establish a man's reputation, to say he was a man of substance when he offered a composition; and at the same time he could not pay his debts, he is understood to be a man of substance; I desire to know, whether it was after or before you had that meeting, and offered the composition?

Scott. I believe it was after.

Mr. *Lutwyche.* Did you take him to be a man of substance afterwards, after you had offered a composition for him?

E. of *Marc.* This gentleman hath answered two things very consistent, that he and three or four more, who knew Mr. Poulter's circumstances, knew that he was not a man of substance then, but that all other people looked upon him to be a man of substance, and he tells you how he came to be so esteemed.

Scott. Yes, so it was.

Mr. *Lutwyche.* I desire to know again, whether after the year 1720, he transacted business as he used to do?—*Scott.* No.

Mr. *Lutwyche.* I desire to know again, where he lived after the year 1720, and what means he had to live upon, besides his business?

Scott. He lived as a gentleman at Hackney, had his house well furnished and full of plate; I have been at his house several times.

Mr. *Lutwyche.* How long ago?

Scott. I believe a year and a half, or two years ago.

Dr. *Sayer.* I don't apprehend it is material what this gentleman thought from the private conversation he had with Mr. Poulter. The general reputation is sufficient for us to justify what was done; I desire he may be asked, whether till that conversation he himself did not look upon him to be a man of substance?

Scott. I looked upon him to be a man of substance, till he told me he was so unhappy that he could not get his 40,000*l.* and upwards of Mr. Knight.

Mr. *Lutwyche.* When was it he told you so?

Scott. I believe some time in December 1720, that he told me so first.

Mr. *Lutwyche.* The composition was in 1722.

Serj. *Pengelly.* I desire he may be asked one general question, Whether after the year 1721, Mr. Poulter retained any character of sufficiency or ability?

Scott. He was looked upon by every one that did not know this affair of Mr. Knight's, to be a man of sufficiency in 1721.

Mr. *Lutwyche.* After 1721, whether it was not generally known that Mr. Poulter was an insufficient man?—*Scott.* No, I believe not.

E. of *Abingdon.* If they have done, I desire to ask this witness a question, whether it was generally known that Mr. Poulter had transacted for Mr. Knight?

Scott. Not as I know of; I believe not.

Serj. *Probyn.* My lords, we shall trouble your lordships with no farther evidence on this Article. So if your lordships please, we shall now proceed to the other Articles.

Mr. *Strange.* With your lordships' permission, we will now go on to the next set of Articles that were opened by the Managers for the honourable House of Commons, which are the Fifteenth, Sixteenth, and Seventeenth Articles. And I shall now, as I did before, confine myself to these particular Articles.

The Charge, my lords, in these three Articles consists of several acts supposed to be done by, or by the order of, the noble Earl within the bar, and are laid to be all tending to the same design of concealing the deficiency of Dormer's office.

For which purpose, my lords, it is said the accounts of the Masters were called for, not with any design of examining the accounts, but with an intent to terrify the Masters, and oblige them to contribute towards answering the demands that should be made upon that office: and as an instance of this design, the Commons charge, that after a contribution by nine of the Masters, the Earl did not oblige them to bring in their accounts.

That upon occasion of another sum of money wanted to pay off a suitor who had an order for money in Dormer's office, the noble Earl pressed the Masters to raise it amongst themselves; and, upon their refusal, caused his secretary to pay it: and that notwithstanding this notice of Dormer's deficiency, an order was afterwards made for Mr. Edwards to enquire, whether there was likely to be a loss of any money deposited with Mr. Dormer.

And as a farther instance of this endeavour to conceal the deficiency, it is insisted on, that several orders were made for the paying some suitors the whole of their demand, without regard to that just proportion to which the other suitors were entitled.

This, my lords, is the state of the complaint contained in these three Articles.

And as to the first part of the complaint in calling for the account, and terrifying the Masters into a contribution, I shall beg leave to insist upon two facts; either of which, in my humble apprehension, will be a sufficient defence against the Charge.

The first, my lords, is, that the contribution was voluntary: and the next is, that long after this contribution the accounts were continued to be called for, notwithstanding it is charged to have been dropped immediately upon the contribution.

To prove the contribution voluntary, I beg leave, my lords, in the first place to look back upon Mr. Lightboun's evidence, where he acquainted your lordships, that upon his asking the noble Earl, who the proposal came from, the Earl's answer was, that it came from some of the Masters: and he concluded his account of that conversation with informing your lordships, that, upon his declining to contribute, the Earl left him to his liberty.

But, my lords, not to rest it upon Mr. Lightboun's evidence only, we shall call Mr. Cottingham, who was acquainted with the whole transaction, and will inform your lordships, that the contribution was altogether voluntary, and of their own proposal.

My lords, the other branch of the Article, and which indeed is the jet of the whole, relates to the dropping the design of looking into the accounts upon the making of this contribution, which we shall be able to falsify; and the account, my lords, we shall give of the whole transaction is this:

In February 1720, Mr. Cottingham, by the Earl's directions, wrote a letter to the Masters, requiring them to make up their accounts, and present them to the Earl, according to a plan which he imparted to them in that letter.

Your lordships are pleased to observe, that Mr. Dormer's failure was at Christmas, and this letter in February following, before Mr. Dormer had any leave to come over, or any discovery had been made of the condition of his office.

My lords, the use which the honourable Managers say was to be made of this letter, was so little understood, that some of the Masters did, pursuant thereto, make up and deliver in an accompt, though not according to the directions they had received: and the affair of Mr. Dormer coming on, caused a stop in making up these accompts, till after the appointing a successor, and making the contribution, which, I think, is already fixed to have been in or about August, 1721.

My lords, the summer being then far advanced, and every body going out of town, the accompts were not exacted at that time; but upon their return to London a new order was sent by Mr. Cottingham in November, with fresh directions for bringing in their accompts.

My lords, I must here beg leave to observe, that if the contribution was all that was aimed at by calling for these accompts, how comes it to pass that Mr. Lightboun, who never contributed, was not called upon, in a particular manner, to bring in his accompt, which, I did not observe, was proved, or so much as opened by the learned Managers?

My lords, the true reason why these accompts were not brought in, was the insuperable difficulties of such an undertaking; of which, I am persuaded, no other evidence need be given, than to reflect on the proceedings that have been of late in taking these accompts.

But, my lords, a learned Manager was pleased to say, why did this noble Earl keep the office, if he was not able to do the business of it? I hope your lordships won't think the noble Earl was idle all the while: every body knows the great variety of business, and the continual hurry a Chancellor is in: the ordinary business of the Court of Chancery is sufficient to engage a man of uncommon application: what a fatigue then, my lords, must it

be, when the necessary attendance upon your lordships, and at the council table, are both taken into the account? Sure I am, my lords, it can never be said, that there was no want of time or leisure for taking these accounts.

My lords, the next branch of the Charge is the order for 1,000*l.* to Mrs. Chitty, which, it is said, was paid by the noble Earl's direction, in order to conceal the deficiency: but pray, my lords, do not the Article and evidence both destroy the supposition? Could the earl of Macclesfield intend to conceal the deficiency, when he cautioned Lockman against marrying Mrs. Chitty, in prospect of any more money to be coming out of Dormer's office? "That this would be the last payment" (I give your lordships the very words) "she was like to receive out of the money paid into the hands of Mr. Dormer, for the residue thereof was in danger of being lost, by reason of the deficiency in the effects of Mr. Dormer." Is this, my lords, a concealment of the deficiency? A payment of 1,000*l.* of the noble Earl's own money, in order that the suitor should have no suspicion of a deficiency!

But to go farther, my lords, we shall shew, that the payment of this money did not proceed from any such low motive, as, I may say, is uncharitably represented in this Article, but from a noble mixture of generosity and compassion.

Mr. Lockman, my lords, represented himself as an undone man if he had not the money: he first insinuated himself among the noble Earl's servants, as a person under the utmost distress: and the frequent solicitations, which himself owns, are a strong evidence of that distress: when he had gained access to the Earl, he told his story in so moving a manner, not without intimations of some desperate resolution he might be forced to take if he had not the money against the time, that, in pure compassion to his distress, the noble Earl (whose purse was always open to the unfortunate) was prevailed with to order him the money. And we shall prove to your lordships, that how little sensible soever he now is of so great a favour, yet at that time he expressed himself in terms of one the most highly obliged; and I believe when our witnesses to this transaction come to be examined, they will leave Mr. Lockman very little credit with your lordships, and will wipe away the most remote suspicion of affecting any concealment by this transaction.

My lords, the last branch of this Article relates to a declaration said to be made by the Earl in the cause of Harper and Case, and an order made therein for Mr. Edwards to enquire if there was likely to be a loss of any money deposited with Mr. Dormer.

My lords, the particular occasion and manner of that declaration and order have been fully stated by the evidence we have already given of the several judgments and proceedings that have been against Mr. Poulter and the marshal, which I shall not trouble your lordships with a repetition of, it being sufficient for my purpose in answering it as an instance of concealment, to observe, that the whole transaction was after the accompts of the Masters had been laid before the committee of council, when it was too late, and to no purpose to affect any concealment.

My lords, the last branch of the Charge I am now upon, relates to the making orders for paying to several suitors their whole demand, out of the effects of Mr. Dormer, without regard to that just proportion to which the other suitors were entitled; and the case of Eddisbury was mentioned for this purpose; though I did not observe the gentlemen entered into any proof of what was done in that case.

My lords, in proof of this Article several orders were read: but I appeal to the evidence of Mr. Edwards, whether it did not appear, upon his cross examination, that it was but in one cause only where the whole money was paid out; and whether that single instance is a sufficient proof of this Article, I must submit to your lordships.

But, my lords, the true answer is this: both the noble Earl and Mr. Edwards doubted not but that the deficiency would be made good, and proceeded upon that expectation; nor can a stronger evidence be given (and I desire it may be applied to some of the other Articles) that they were under this persuasion, than Mr. Edwards's making payments without any objection.

Especially, my lords, when it is considered too, that Mr. Lightboun, who was so averse at first to any contribution, has, in that letter which has been read to your lordships, mentioned several of his own schemes for making good the deficiency.

And if there was a prospect of making good the deficiency (as I humbly apprehend it is plain there was,) it was very proper and natural to make the orders in the manner they are now complained of. The nature of ordering money out of Court makes it impossible the suitors should call for it all at once, but the same is ordered out by degrees: and Mr. Cottingham's taking an assignment of Chitty's order, shews plainly, that it was expected effects would in time come in to discharge that, and all other demands.

I would not, my lords, be understood by any thing I have offered, as if I intended to dispute the rule of equity that has been laid down by the Managers, that where several persons have demands out of one common fund that cannot answer the whole, there ought to be an average in such case: but what I shall beg leave to insist upon is, that that rule only holds place where the quantum of what is left to answer is fixed and certain. In this case the effects were daily coming in, and and therefore a declaration of an average where there was likely to be no deficiency, would not, in my humble apprehension, have been advisable or proper.

I beg leave, my lords, to close my observations upon all the Articles relating to the concealment of Dormer's deficiency, with sub-

Serj. *Probyn.* My lords, we shall trouble your lordships with no farther evidence on this Article. So if your lordships please, we shall now proceed to the other Articles.

Mr. *Strange.* With your lordships' permission, we will now go on to the next set of Articles that were opened by the Managers for the honourable House of Commons, which are the Fifteenth, Sixteenth, and Seventeenth Articles. And I shall now, as I did before, confine myself to these particular Articles.

The Charge, my lords, in these three Articles consists of several acts supposed to be done by, or by the order of, the noble Earl within the bar, and are laid to be all tending to the same design of concealing the deficiency of Dormer's office.

For which purpose, my lords, it is said the accounts of the Masters were called for, not with any design of examining the accounts, but with an intent to terrify the Masters, and oblige them to contribute towards answering the demands that should be made upon that office: and as an instance of this design, the Commons charge, that after a contribution by nine of the Masters, the Earl did not oblige them to bring in their accounts.

That upon occasion of another sum of money wanted to pay off a suitor who had an order for money in Dormer's office, the noble Earl pressed the Masters to raise it amongst themselves; and, upon their refusal, caused his secretary to pay it: and that notwithstanding this notice of Dormer's deficiency, an order was afterwards made for Mr. Edwards to enquire, whether there was likely to be a loss of any money deposited with Mr. Dormer.

And as a farther instance of this endeavour to conceal the deficiency, it is insisted on, that several orders were made for the paying some suitors the whole of their demand, without regard to that just proportion to which the other suitors were entitled.

This, my lords, is the state of the complaint contained in these three Articles.

And as to the first part of the complaint in calling for the account, and terrifying the Masters into a contribution, I shall beg leave to insist upon two facts; either of which, in my humble apprehension, will be a sufficient defence against the Charge.

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To prove the contribution voluntary, I beg leave, my lords, in the first place to look back upon Mr. Lightboun's evidence, where he acquainted your lordships, that upon his asking the noble Earl, who the proposal came from, the Earl's answer was, that it came from some of the Masters: and he concluded his account of that conversation with informing your lordships, that, upon his declining to contribute, the Earl left him to his liberty.

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I beg leave, my lords, to close my observations upon all the Articles relating to the concealment of Dormer's deficiency, with sub-

mitting it to your lordships' judgment, if the whole transaction does not speak itself to have been one continued endeavour to secure to the suitors their whole demand, and to have been no more?

Serj. *Probyn.* My lords, the Managers, when they entered upon these Articles, produced an order made by the late Lord Chancellor, in the year 1720, by which the Masters were obliged to bring in their accounts, which as they charge to have been concerted with other views, and for very different ends than at first appear, we think it will be extremely proper for us to begin our defence to that part of the Charge with a witness who is ready to shew your lordships the real designs the impeached Earl had in calling for these accompts; and his evidence, we humbly conceive, will satisfy your lordships that it could be for no other purpose than that the Earl might the better know the true state and condition of their respective offices, in order to find out a proper method of redressing such grievances as were most apprehended at that time. My lords, it will appear by the course of the same witness's evidence, that the other order that was made upon them afterwards in December following, in as strong terms as the former, could be for no other reason or purpose than that his lordship hath assigned in his Answer, that he might understand the state of the several offices, so as to be able to apply proper remedies to the danger which was then dreaded. All this will appear yet more fully from the evidence of another witness, who is to inform your lordships of the particular directions the noble Earl gave about the manner of bringing in these accompts, with the names of the causes of the respective solicitors concerned in them, and also what the several sums first paid in were, the time when so paid in, and also when the same or any part were paid out again, together with many other particulars which his lordship thought necessary for his more exact information. It will be likewise made appear to your lordships, how the Masters were severally consulted with about this matter, and that the assistance of the Master of the Rolls was at length called in. But all the Masters agreeing, and particularly Mr. Holford (who had been in the office for twelve years) that it was next to impossible to bring in their accompts, as first directed, in any reasonable time; then it was, and not before, that the noble Earl condescended that they might bring them in in a different manner. Now, my lords, as to the suggestion that all this was only a scheme made use of to terrify the Masters into a contribution towards Dormer's deficiency, give me leave to say it is impossible to collect the least view of that kind from the evidence laid before your lordships on that head; for the Masters who did contribute on this occasion, have all sworn that they paid in their money voluntarily, and without being any ways influenced by his lordship's threats or persuasions; so far from that, that Mr. Lightboun (the only Master who refused concurring in this contribution) made no other objection at first to it, than that the proposal did not come from his lordship, but from the other Masters; for in that case he declared, that, if it had come from the noble Earl himself, he might have had more regard to it, and would have taken it into his consideration. So that we doubt not, upon the whole, but it will plainly be made appear to your lordships, that the constant application which the noble Earl made from time to time to the Masters for this purpose, proceeded from no other view, than that as soon as he might be truly informed of the state of their offices, he should apply proper remedies to whatever abuses he should discover; and that as this was always his real intention, so he would have put it effectually in execution, had he not resigned the great seal so soon.

Com. Serj. My lords, we shall call a witness to shew, that after the 500*l.* a-piece was paid, the accompts were called for; it cannot then be pretended, that this calling for the accompts was to terrify the Masters to pay this 500*l.* a-piece.

The time of the payment of these 500*l.* was in August; these accompts were called for in the beginning of November.

Mr. *Cottingham* called.

Serj. *Probyn.* I desire Mr. Cottingham would inform your lordships, whether any directions were given to call in those accompts about November, 1721?

Cottingham. I did in November, by the direction of the Earl, write a letter dated November 7, 1721.

L. C. J. *King.* Have you any draught of that letter?

Cottingham. I have a draught, the committee required me to leave the letter with them.

Mr. *Lutwyche.* My lords, we will do the noble Earl all the justice we can; here are the letters.

Cottingham. The first letter is dated February 14, 1720.

Mr. *Lutwyche.* Whom is it directed to?

Cottingham. The Letter is directed to each Master, and this is the Letter:

"Sir; I am commanded by my Lord Chancellor to signify to you, that you do, with all convenient speed, lay before his lordship an account in several columns,

"1. Of the name of the cause. 2. The solicitor or agent. 3. The date of the order. 4. For what purpose the money was brought in. 5. How much was brought in. 6. When. 7. How much in hand. 8. How much on security. 9. How much paid out.

"A distinct Account of the Securities.—1. Cause. 2. From whom the security is taken. 3. What the security is. 4. In whose name taken. 5. For how much each security. 6. The total of the several securities in the same cause. 7. In whose hands lodged.

"A distinct Account of Money paid out.—1.

Cause. 2. By what order, and of what date. 3. When paid. 4. To whom.—Your very humble servant, P. Cottingham."

"*February* 14, 1720."

"Sir; By my letter of the 14th of February last, I signified to you my Lord Chancellor's pleasure, which was, that you should with all convenient speed lay your account before his lordship; (the method whereof was to be in several columns subscribed at the foot of that letter.) I am now farther to acquaint you, that his lordship is very much surprised to find, that in all this time no such accompt hath been laid before him: and therefore hath commanded me to tell you, that it is expected to be delivered in, on or before the last day of this term. And, if this is not complied with, you will oblige his lordship (though very unwillingly) to think of other measures; which I doubt not but you will avoid, by a ready compliance with what is a second time required of you. And to the end there may be no mistake as to the method of your accompting, I here subscribe it again at the foot of this letter; and am, Sir, your very humble servant, P. Cottingham."

"*November* 7, 1721."

To the best of my remembrance, this Letter was delivered to ten of the Masters.

Mr. *Lutwyche.* Did you read it to them?

Cottingham. No: I am going to give you an account. My lords, according to a memorandum I kept at that time of this letter, it was delivered to ten of the Masters: to Mr. Rogers, Mr. Hiccocks, Mr. Fellowes, Mr. Lightboun, Mr. Bennet, Mr. Holford, Mr. Borrett, Mr. Godfrey, Mr. Conway, and Mr. Lovibond.

Serj. *Probyn.* We desire that the second letter in November, 1721, may be read.

Cottingham. The second letter is dated November 7, 1721. "Sir, by my letter of the 14th of February last, I signified, &c. No. 47."

Serj. *Probyn.* By this it appears to be after the several 500*l.*'s were paid in, the last 500*l.* was paid in in August before, which shews, these accompts were to be delivered in for no other reason, than that the suitors should have satisfaction as soon as a proper remedy could be found.

Com. Serj. I beg leave to make one observation; here is——

Mr. *Lutwyche.* If they have any more questions to ask the witnesses, they may; the observing is proper afterwards.

Dr. *Sayer.* I only beg leave to ask this one question, to be better informed: the letter recites, it is written by the command of my Lord Chancellor: I would ask, whether my Lord Chancellor did give such directions?

Cottingham. Yes, my lords, he did.

Mr. *Plummer.* If they have done with the question, I would ask Mr. Cottingham, in the words of his own letter, whether the earl of Macclesfield did oblige the Masters to deliver in their accompts in pursuance of such his said order?

Cottingham. Of the letter of November, 1721, I have kept no memorandum; of the first letter I have.

Mr. *Plummer.* Whether that letter of 1721, was delivered to the Masters?

Cottingham. I believe it was.

Mr. *Plummer.* Then I desire to know, if the Masters did deliver in their accompts?

Cottingham. I don't remember they did.

Mr. *Plummer.* I desire he may be asked, if after this time that the 500*l.* was paid in obedience to the first letter, there was afterward any other demand made upon the Masters for more money?

Cottingham. I know of no demand made upon them, except the 500*l.* a-piece.

Mr. *Plummer.* I desire he may be asked, if he doth not remember Mrs. Chitty's affair, and if that was not after 1721?

Cottingham. The business of Mrs. Chitty was but in July last.

Serj. *Pengelly.* I desire he may be asked, whether, since no accompt was called for after this last letter, whether he did not understand the reason to be, because he apprehended the Masters would make good Mr. Dormer's deficiency?

Dr. *Sayer.* My lords, I submit it, whether that question is material as to what his apprehension was; your lordships are judges only upon evidence of fact, and not upon his thoughts or apprehensions?

Serj. *Pengelly.* Why were not the accompts called for afterwards?

Cottingham. I really can't tell the reason.

Serj. *Pengelly.* Whether he acquainted my lord Macclesfield, that the Masters would make good the deficiency?

Cottingham. I told your lordships I did.

Serj. *Pengelly.* Therefore I desire he may be asked, whether after that time he received any orders to send to the Masters to give in their accompts?

Cottingham. I can't speak particularly as to the times.

Serj. *Pengelly.* Whether those other measures, intimated in his letter to be taken, were not signified to him by my lord Macclesfield to be, that the cash should be taken out of their hands?

Cottingham. My lord called me into his study, and directed me to write this letter; all he said was, he was sorry that the Masters had not brought in their accompts as he required, and that if they did not bring them in by the last day of the term, he said he would take other measures: my lord did not say to me what those other measures were, whether it was to make an order in form, and then he should expect they would yield obedience to it; all the Earl told me was no more than to write to the Masters that he would take other measures; what those other measures were, I do not know; but I apprehended it to be an order his lordship would make for obliging him to it.

Mr. *Snell.* I desire he may be asked, wha-

ther he did not himself apprehend by those other measures, the taking the money out of the Masters' hands?

E. of *Macc.* My lords, I submit it, whether a question of this kind is proper; he hath been asked what those measures were; he hath told your lordships that he knows not; but he has said what he apprehended they were; if now any fact occur to him that may give reason for apprehending otherwise, let him acquaint your lordships with it.

Cottingham. Your lordship said you would take other measures; what I apprehended was, your lordship would make an order in form, if they did not comply with that letter.

Dr. *Sayer.* My lords, I beg leave to ask one question: whether the Masters, after this letter was brought to them by Mr. Cottingham, did not represent to him the difficulty of making up their accompts?

Cottingham. There were several particulars mentioned in the former letter, there was the causes to be named, &c. Some of the Masters told me, they had not kept their accompts so as to answer all the particulars in the letter; others said, it would take up a great deal of time; others that the manner required was very difficult and tedious, and that it was almost impracticable, so many items were contained in the letter, that they seemed to say it could not be done.

Dr. *Sayer.* I desire he may be asked, whether he hath any paper of the method of accompting required by the Committee, that his majesty was pleased to direct to look into this matter?

Cottingham. I have not a copy of it here. There is an original order, if the Masters please to produce it, I left it with Mr. Lightboun.

Com. Serj. If the gentlemen have it, I hope they will produce it.

Cottingham. The original order is of the 3rd of November last, which I left signed by the Earl.

E. of *Macc.* This will come more properly under another Article: the gentlemen, the Masters, will take care to look it out that it may be ready by that time.

Cottingham. My lords, I have now found it; I can't say it is a true copy, dated the 3rd of November, 1724, signed Macclesfield, C. "Let the several Masters"——Am I to read it, my lords?

Mr. *Lutwyche.* What, the order of the 3rd of November last?

Com. Serj. This order cannot relate to this matter. We are now upon the second letter in 1721. The letter is framed in so strong terms, that it can't be supposed but the Earl was very much in earnest, and it can't be insinuated as if intended to make the Masters comply in the affair of Mrs. Chitty and Lockman, because that transaction was but in July last.

E. of *Macc.* I desire, my lords, to go a little back again, upon recollecting, that the question the honourable Manager was pleased to ask, about his giving me an account that the Masters would make good the deficiency, carries an insinuation, as if this method were dropped upon it: I desire he would inform your lordships, whether he can be sure of the exact time, whether this was before or after November, 1721?

Cottingham. I really can't be sure of the exact time.

E. of *Macc.* How near was it to Mr. Dormer's going out, and Mr. Edwards's coming into his office?

Cottingham. Mr. Edwards came in in May, 1721. It was near his coming in.

E. of *Macc.* I desire to know, whether you can recollect the time you did tell me of it? Whether it was after November, 1721, or before?

Cottingham. I several times mentioned it to your lordship before November 1721, and I believe several times after; but that I cannot certainly tell, nor can I be particular to a day.

E. of *Macc.* Did you ever hear of it before the 500*l.* a-piece was paid?

Cottingham. No, my lords, it was after they had paid the 500*l.* a-piece; but, my lords, I don't know that they agreed to make good the deficiency; I only told my lord I thought they intended it.

Lord *Trevor.* He hath proved two letters sent by the direction of the noble Earl. As to the first letter he kept a memorandum as to the time, but no memorandum of the second, I would ask him as to the time, when the Masters made that representation of the difficulty of giving in the accompts, whether it was before or after the second letter, or between the first and the second letter?

Cottingham. To both the letters they still made a representation of the difficulty.

Lord *Trevor.* Then I desire to ask one question more, that is, whether after the representation made after the second letter, they owned that they had received the second letter?

Cottingham. I verily believe that the second letter was delivered to the Masters, as the other was, but I kept no memorandums of it; I verily believe the Masters had it; I can't tell; I took it for granted they had it; I trusted one of my clerks with it to take a memorandum; I enquired after him; he hath been gone from me, and I can't find him out: I verily believe it. I have no reason to doubt but I gave it; the Masters know that.

Serj. *Probyn.* If Mr. Holford is called, he will explain it; on his cross-examination he admitted a second letter was sent for him, and left in the public office: that appeared in his cross-examination.

Mr. *Strange.* It might not be improper (this letter is before the honourable Managers) to enquire if they had it not from some of the Masters?

Cottingham. No, they had it from me.

Mr. *Holford* called.

Serj. *Probyn.* I desire he may be asked, whether he had not any notice of the letter in November 1721, whereby the Masters were obliged to bring in their accompts?

Holford. Indeed, my lords, I do not remember that letter.

Serj. *Probyn.* I desire he may be asked, whether he remembers a second letter about accompts?

Holford. Whether it was a letter or a message I cannot tell; but between the first accompt in February 1720, and the last in November last, I was called upon to accompt, and had prepared it; but this second letter dated in November 1721, I do not remember any thing of it.

Serj. *Probyn.* How long was it after the payment of the 500*l.*?

Holford. It was a good while after.

Serj. *Probyn.* That is all we contend for.

Holford. I believe not above a year before the last.

Serj. *Peng.* I desire he may be asked, whether after this letter, supposed to be in November 1721, his accompt was ever demanded of him?

Holford. I did deliver to my lord an accompt of November 1721; and I think a year before November last, in pursuance of either a letter or a message, I don't know which, my lord required an account; then I delivered an account of money, not of securities in my hands.

Serj. *Peng.* Whether that was an account in pursuance to that letter, demanding and requiring it of him?

Holford. Not as I know of, indeed.

Mr. *Lutwyche.* My lords, as some mention hath been made of it, I think it may be proper to know what he can say to it, whether he ever promised to make good the deficiency of Mr. Dormer?

Holford. I never did, my lords.

Mr. *Cottingham* called again.

Serj. *Probyn.* I desire he may inform your lordships what he knows in relation to the payment of the 1,000*l.* to Lockman, and what conversation he had with Mr. Lockman?

Cottingham. About the beginning of July last, to the best of my remembrance, Mr. Lockman told me, that Mrs. Chitty had an order upon Mr. Edwards the Master to pay her 1,000*l.* That she had been with the Master but could not get the money, and that he had spoke to my lord Macclesfield about it, and the Earl had promised to speak to the Master.—And he desired me to speak to the Earl concerning it: I promised I would, and accordingly I did; he sent me to the Master. When I came to him, I spoke to him of it; he said he had no money; I informed the Earl of it; the Earl said he could not tell what to do. I informed Mr. Lockman of it; he seemed to be under the greatest concern, and said, if he had not the 1,000*l.* he was undone; he was going to marry Mrs. Chitty, and Mrs. Chitty would not marry him, unless his debts were paid, and she had given him this 1,000*l.* to pay his debts. He had compounded his debts, and he repeated it over and over again, that if this 1,000*l.* were not paid, he was undone.

I have not seen a gentleman in a greater distress than he appeared to be; on which I told him, if he would please to have a little patience I would consider the thing, and see what could be done. I did consider it; and it came into my mind that Mr. Lightboun had not paid his 500*l.* I acquainted the Earl with it, and said Mr. Lightboun had not paid his 500*l.* and if he could prevail upon him to do it, I thought it would be easy to get 50*l.* a-piece of the other Masters, and that would do.

By the Earl's order, I attended Mr. Lightboun, and told him that the Earl expected him to pay his 500*l.* but I could not get a penny from him; so he refusing to pay the 500*l.* that proposal of the 50*l.* a-piece dropt: I acquainted the Earl of this; he said he could not tell what to do. I acquainted Mr. Lockman, and told him I had done all that was in my power to do; and that it was not to be done, unless he expected I should pay it out of my own pocket, which I was sure he could not expect: when I told him that, he said, I am undone, Mrs. Chitty will not marry me, his royal highness the Prince of Wales will not protect me, my creditors will throw me into a gaol, there I must rot and starve. He made use of so many extravagant expressions, and was under that pain and agony of mind, that I apprehended he would do himself a mischief. I could say nothing to it, I had done all for an unfortunate gentleman that possibly I could do. Two or three hours after this, when I was at dinner, he came to me again, and told me the Earl wanted to speak with me immediately; he begged of me of all things in the world to go: on that I went to the Earl. The Earl was pleased to send for me into an inner room, and said, that he was teized out of his life by Mr. Lockman; I told him I was so too, I had no rest night nor day for him; I then represented to the Earl his own story in substance as he had told me. The Earl said he was sorry to find Mr. Lockman brought to that state and pass. I told the Earl I was afraid of the consequence, I did not know what a despairing man might do, he seemed to be in the utmost despair. Upon that the Earl ordered me to pay him the 1,000*l.* and said, he would pay it me again. When I saw Mr. Lockman, I told him I had now received orders to pay him; I had not the money by me, but he should have it in a little time, three or four days would break no squares; he said, I am satisfied, provided it is paid. I said I had it not by me, I must borrow it; I did so; and on the 30th of July I paid him the 1,000*l.* I think it was three or four days after, he asked me what reward he should give me; I told him that his distress was so great that he should not give me any reward; I would not take a penny of him; and I never had the value of a dish of coffee of him; I paid him the money, I borrowed it for that purpose. Says I, Mr. Lockman, it appears to me that you are in great dis-

tress, I will borrow the money. I did borrow the money, and paid interest for it, merely to supply the gentleman.

Serj. *Probyn.* I desire he may be asked, if he knows of any other sum of money demanded by Mr. Lockman after this 1,000*l.* was thus agreed to be paid him?

Cottingham. After this money was agreed to be paid, and, I think, the same evening, I received this letter from him, which any gentleman that will may read. (The letter read.) Signed Lockman, Monday evening.

" Sir; *Monday Evening.*

" I am very sensible of the favour you have already done me, in promoting what my lord in so affable a manner was pleased to promise me, which kindness I shall gratefully acknowledge all my life; but as there is so great a necessity, I hope you will pardon me the sooner in being once more troublesome, to beg of you to remind his lordship of letting Mrs. Chitty have the other 574*l.* which my lord was pleased to say we should have, and without which Mrs. Chitty, who hath neither out of Chancery, nor her estate, received any money this two years, cannot spare me the whole 1,000*l.* As my whole ease and quiet depends on your kind assistance, I must beg, Sir, once more to use your interest to let us have it on Thursday afternoon, between four and five, when Mrs. Chitty intends to wait on you for the other. I shall be very proud on all occasions to shew with how much gratitude and esteem I am, Sir, your most obliged humble servant,

" A. LOCKMAN."

Dated Monday evening, no other date. My lords, upon the receipt of this letter, the very same evening I laid it before the Earl, I told him that it appeared by this he wanted 570*l.* more. The Earl said he was very much surprised at this gentleman's sending such a letter, he did not know what he meant by 570*l.* more than he promised, and, in short, told me he could advance no more.

Mr. *Strange.* I desire he may be asked, whether he had any discourse with Mr. Lockman, relating to this 570*l.* after this letter?

Cottingham. I had a discourse with him some time afterwards about the letter.

Serj. *Probyn.* I desire to ask him, whether, after this letter, Mr. Lockman came to know what answer he would give him?

Cottingham. Mr. Lockman came on the Thursday following, being the 30th of July; Mrs. Chitty did not come: and then I told him that I had received his letter, and had laid it before the Earl, and that the Earl understood not what he meant by it, that this was a growing upon him, and he would not pay a penny more; I thought he had been very generous to him, and I told him, I wondered what he meant.

Serj. *Probyn.* I beg leave to take notice, and your lordships will please to recollect, that Lockman swore he never made any demand of any money besides the 1,000*l.*

Mr. *Lutwyche.* That is to be observed when the witness is examined throughout.

Serj. *Probyn.* I ask whether Mr. Lockman did petition my Lord Chancellor for this sum of money?

Cottingham. I don't remember Mr. Lockman petitioned, I believe not.

Serj. *Probyn.* Or Mrs. Chitty?

Cottingham. Yes, Mrs. Chitty did, before the payment of this 1,000*l.* as I remember.

Mr. *Lutwyche.* Was there any petition preferred before the payment of the 1,000*l.* because the money was not paid according to the order, which I think was dated March 11, 1723?

Cottingham. Yes; I told you so before.

Mr. *Lutwyche.* I desire to know, whether there was not a general meeting of the Masters before my lord Macclesfield ordered him to pay the said 1,000*l.* to Mr. Lockman?

Cottingham. Yes, there was.

Mr. *Lutwyche.* Whether it was not after the meeting of the Masters, when it was proposed to Mr. Lightboun to pay his 500*l.* and the others 50*l.* a-piece?

Cottingham. Yes, I believe it was.

Mr. *Plummer.* Mr. Cottingham hath given a long evidence, he hath told you on the application for this 1,000*l.* he recollected that Mr. Lightboun had not paid his 500*l.* and if he could get him to pay his 500*l.* and the other Masters 50*l.* a-piece, that would make up the 1,000*l.* The question I would ask is, if Mr. Cottingham had then any orders from the earl of Macclesfield to convene the Masters?

Cottingham. No, I had then no orders. The first order I had to convene the Masters together, was on a Monday before payment of the 1,000*l.* as I remember: Mr. Edwards was then at my lord's house, and my lord ordered me to speak to him to convene the Masters; and they were convened, and came to my lord's house that evening, as I was told, but that was after the money was ordered to be paid.

Mr. *Lutwyche.* I desire Mr. Cottingham may look upon that, and tell us, whether it is his hand.

Cottingham. This is my hand *(reads.)* " His lordship can do nothing in it at present."

Mr. *Lutwyche.* Do you remember any thing of this petition being offered?

Cottingham. Yes, I do remember it; it is a Petition of Mrs. Chitty preferred to the Earl, to be paid 1,000*l.* This Petition came to my hands; the Earl said, he could do nothing in it at present, and this order writ upon it is my hand.

Mr. *Lutwyche.* Whose Petition is it?

Cottingham. The humble Petition of the defendant Elizabeth Chitty, Mrs. Chitty's Petition.

Mr. *Lutwyche.* What is the answer writ upon the back?

Cottingham. " His lordship can do nothing in it at present."

Dr. *Sayer.* We apprehend it is of consequence

e have this meeting cleared. I desire he may e asked, whether he knows of any meeting of he Masters, and when, and what was done here?

Cottingham. Yes, there was a meeting that evening, but I was not present.

E. of *Macclesfield.* By the questions they have asked, they have taken it for granted as if he knew what was done at that meeting of the Masters; I desire to know, whether he was present or not at that meeting of the Masters?

Cottingham. I was not; I said so before.

E. of *Macclesfield.* Then I think he says the day of payment of this money was on the 30th of July?—*Cottingham.* Yes.

E. of *Macclesfield.* What day were the Masters called upon to meet?

Cottingham. I can't be positive, but I think it was the Monday before payment of the 1,000*l.* This meeting of the Masters was between the order and payment of the money.

Mr. *Plummer.* I believe there is a mistake in this matter; I desire to know of Mr. Cottingham, whether Mr. Edwards was not by when he acquainted the Earl with this demand, and proposed to him the method of paying it by Mr. Lightboun's 500*l.* and the other Masters 50*l.* a-piece?—*Cottingham.* No, no.

Mr. *Plummer.* I desire it may be cleared then, and to ask him, if Mr. Edwards was not by when he acquainted my lord Macclesfield of the demand of the 1,000*l.*?

Cottingham. No, Mr. Edwards was not by: when this 1,000*l.* was directed to be paid, Mr. Edwards was in the house, but the Earl did not see him; when I spoke to Mr. Lightboun for the 500*l.* it was only between Mr. Lightboun and me; Mr. Edwards was in the house when my lord spoke to me, and ordered me to speak to Mr. Edwards to convene the Masters together.

Serj. *Pengelly.* I desire he may be asked, whether the 1,000*l.* was paid before he made the proposal to my lord Macclesfield, that Mr. Lightboun's 500*l.* and the other Masters 50*l.* would pay it?

Cottingham. The money was paid afterwards, I have told you so before.

Serj. *Pengelly.* Before the 1,000*l.* was paid, whether did not you hear that the Masters had refused to advance the farther sum of 50*l.* a-piece?

Cottingham. Yes, I told you so before, that Mr. Lightboun would not pay his 500*l.* so the other Masters did not pay their 50*l.* a-piece; this was some time before the payment of the 1,000*l.*

Mr. *Elphinstone* called.

Mr. *Strange.* My lords, we desire Mr. Elphinstone to give your lordships an account of what he knows of the application of Mr. Lockman for this 1,000*l.*

Elphinstone. My lords, Mr. Lockman and I often had conversation together before he received the 1,000*l.* upon the account of Mrs. Chitty. He told me often that he had compounded his debts with his creditors, and if he could not receive the 1,000*l.* against a certain day, on which he had engaged to pay it, he should be ruined and undone; and some time after he told me, that his creditors had been with much difficulty brought to give him some few days longer for payment of the composition, and that if he had it not then he should be ruined and undone for ever; swearing by the blessed name of God, that that disappointment would be a means of breaking off the match with the lady.

Serj. *Probyn.* Go on.

Elphinstone. I can't be positive as to the day, whether it was the same day that he received the 1,000*l.* or a day or two before; but I then heard the noble Earl declare to him, that in pity and compassion to his circumstances, and the great difficulty he then laboured under, he the said Earl had given directions to Mr. Cottingham to pay him the 1,000*l.* and about two hours after, or something more, Mr. Lockman came to me, and with abundance of joy told me how much obliged he was to the noble Earl, for that he had relieved him in his circumstances, by giving Mr. Cottingham orders to pay him the 1,000*l.* He seemed to express this with an uncommon pleasure, and did not at all doubt it would be agreeable to persons of the highest distinction and character to know it, and that he would make them acquainted with it. My lords, I think it was on Friday last, in a conversation with me and others here in the Painted Chamber, he declared he would rather have given two or three hundred guineas or pounds, than have been examined on this occasion; and said, Damn it, it hath happened, through a silly word or two I dropt to the solicitor on the other side. I asked him what it was? he said, it was his telling him he had received the 1,000*l.* for Mrs. Chitty, by the noble Earl's direction.

Serj. *Probyn.* After this money was paid, whether he hath had any discourse with him, and whether it was owned by him that it was out of the Earl's own pocket?

Elphinstone. Yes, many a time, and with great respect.

Mr. *Plummer.* I desire the counsel for the noble lord may explain one thing: I think the witness said, Mr. Lockman said, he had rather give two or three hundred pounds than have been examined. Whether the witness doth apprehend by what Mr. Lockman said, that he comes an unwilling witness?

Elphinstone. No, my lords, I did not say that Mr. Lockman was an unwilling witness, but that he told me and others, he had rather have given two or three hundred guineas or pounds, than have been examined on this occasion.

Serj. *Probyn.* We shall give your lordships no farther evidence on this Article; we shall now proceed to the Seventeenth Article; which charges the earl of Macclesfield, that, in order to conceal the deficiency in Dormer's office, and to prevent any public enquiry, he did,

from time to time, in violation of the trust reposed in him, make orders on Mr. Edwards for payment of the money belonging to several particular suitors, which had been lodged in the hands of Mr. Dormer; in obedience to which orders several sums were paid, without regard to, or consideration of the proportion which the rest of the suitors were entitled to, out of the effects of the said Mr. Dormer, whereby many of the said suitors lost the benefit of their proportionable share, to which in justice they were entitled.

The crime supposed in this charge is denied by the Earl in his Answer; he had no certain knowledge what Mr. Dormer's estate would come out to be; but he was under a full persuasion that effects would come in in due time, to make full payment; and that the only reason why they were not paid in an average, was because no application was made by any of the suitors for that purpose.

Com. Serj. As to the Seventeenth Article, your lordships observe there was a full persuasion both in the noble Earl and Mr. Edwards, that there would be sufficient to pay every one; besides, I think he himself made not above one order, not more than this one in the case of Chitty; your lordships will please to observe, from the evidence of Mr. Edwards, that the noble lord who made these orders was firmly of an opinion, from the accounts he had received, that the deficiency would be made up, so likewise Mr. Edwards was then under the same persuasion: we shall rest it here that it was no manner of fault under these apprehensions, to make such an order as that was.

Mr. *Robins.* If your lordships please, there is in the close of the Sixteenth Article a declaration, supposed to be made by the earl of Macclesfield, then sitting in Court, I had the honour to be in Court when the declaration was made: as I had the honour to be in Court at that time, I apprehend that what he said was——

Mr. *Plummer.* If the gentleman speaks as counsel, he stands in a proper place, but if he comes as an evidence, I beg he may come to the bar and be sworn; I humbly appeal to your lordships if it is not proper.

Lords. Ay, ay.

Dr. *Sayer.* If the gentlemen think it proper to insist upon it, the gentleman is ready to be sworn.

Com. Serj. The gentleman's character is so unexceptionable, that we hope the learned gentlemen will not put this difficulty upon him of taking an oath in a cause, wherein he is counsel.

Mr. *Plummer.* My lords, I insist upon it, because then I shall have the liberty of asking some questions, which I apprehend I have not now.

Serj. *Probyn.* My lords, we submit it upon the evidence that hath been already given, he himself did declare then, when it came before him regularly, he would examine into it; and the first opportunity this came before him in judgment, he then put it into a method, and accordingly referred it to a Master, and all proper measures were taken.

Com. Serj. My lords, we shall, with your lordships' permission, now proceed to lay before you what we have humbly to offer in defence of the noble Earl as to the Eighteenth Article. The charge therein contained is in effect, that though the Earl knew, that the Masters of the Court might and did dispose of, and traffic with the effects of the suitors; and though proposals were made for remedying of it, yet the Earl neglected to enquire into the accompts of the Masters, permitted, and encouraged them to employ, and traffic with the effects of the suitors, and took no care that those effects should be placed out, so as to prevent such practices of the Masters, or that they should give such security as was proposed; and this is charged to be done with a corrupt view and intention of making an unlawful gain by the sale of those places, and to keep up the price of them.

The proof of these matters depends entirely upon the testimony of Mr. Lightboun, Mr. Holford, and Mr. Kynaston, with the particular repetition of whose evidence, I shall not presume to trouble your lordships after so much time has been already spent; but shall beg leave to observe upon the whole, that there is not the least evidence to support that part of the Article, whereby the Earl is charged with permitting and encouraging the trafficking with the suitors' effects. So far from it, my lords, that the quite contrary appears from the evidence which Mr. Lightboun has given upon this Article. He has informed your lordships, that when a proposal was made, in order to the making good the deficiency in Dormer's office (which the Earl had confessedly so much at heart) that each Master should out of the suitors' effects in his hands, place out a sum of money, the interest whereof should be applied for that purpose; the Earl would not give the least countenance to that practice, by coming into the proposal; but in plain terms declared, he neither could nor would give any encouragement or direction for the disposal of the suitors' effects, for any other purpose than their own benefit.

My lords, the gentlemen of the House of Commons are so sensible of the defect of their evidence as to this point, that they seem not to rely upon it, but are forced to fly to implication for assistance; and your lordships are told that this part of the charge is a consequence of the Earl's not having taken care that the suitors' effects were so placed out, as to put it out of the power of the Masters to make such an use of them; and that this neglect amounts to a permission and encouragement to the Masters, to dispose of and traffic with them as they have done.

My lords, if this part of the Article is to be considered, as a distinct, separate charge, it is

so obvious, of how dangerous a consequence it would be to admit such argumentative evidence only as a proof of it, that I apprehend I need not trouble your lordships with saying any thing more to it; if it is to be looked upon as a consequence only of some other part of the charge, as a mischief arising from the neglect of putting those effects of the suitors out of the power of the Masters to make such use of them, I am something at a loss to know, why it is made a distinct, self-subsisting charge; it may perhaps by that means swell the bulk of the Article, but we humbly submit it to your lordships' consideration, whether it at all increases the weight of it?

My lords, the charge in this Article is not founded upon a bare neglect of the Earl, upon an omission only of doing what it is conceived he ought to have done, for the prevention of this misbehaviour of the Masters; that perhaps was thought too slight a ground for an Article of an impeachment, especially when the neglect here complained of does not consist in the not redressing any particular grievance, pointed out by the complaint of any of the suitors of the Court, but in the not making general orders for the reformation of the Masters. Perhaps, my lords, it might be thought, that such a charge would have been sufficiently answered, by alleging, as the truth is, that the Masters have only been continued by the Earl in the same degree of trust and power in which he found them, and with which they were invested long before he presided in that Court: it may be too, my lords, it might be considered, how wide and dangerous a field for impeachments and other prosecutions would have been opened, by making it criminal in every one who had the superintendency of an office, barely to neglect, or omit, the introducing such new general orders and regulations, as seemed to carry a probability of preventing the abuses of the under ministers of such office; and therefore it is, my lords, as it may be presumed that the Earl's behaviour in this respect is alleged to be fraudulent, and unjust, and with an intention of making unlawful gain to himself, by the disposal of those offices, and with a corrupt view and intention to keep up the price of them: so that it is not remissness, or negligence that the Earl stands here accused of, but fraud and corruption, and if this is not made out, we must humbly submit it to your lordships' judgment, whether or no this Article does not fall to the ground?

But what proof, what evidence has been offered for that purpose? None, my lords, that I remember; but your lordships are left to recollect it, by way of argument, from the Earl's not having made use of proper expedients to prevent this ill practice; the Masters, by that means, were more at liberty to make a profit out of their offices, which for that reason sold at higher prices, and therefore the Earl must be guilty of this neglect with that view; a severe (though not a strict) consequence indeed! Is the prospect of gain from hence so certain as to tempt so strongly? And are there no other reasons apparent why the Earl should defer his regulations in this matter? I need not put your lordships in mind of the great uncertainty of a continuance in that high (but slippery) station: and as the profit supposed to be in view, depends upon the death or alienation of the Masters, which sometimes do not happen in a long interval of time; when this uncertainty is added to the other, I appeal to your lordships, whether it can be easily imagined, that any, even the most greedy person, allowing him only to be in his senses, could be prevailed upon to hazard his reputation and quiet, upon such distant, such uncertain hopes; especially my lords, if the necessity of so harsh a conclusion be excluded, by its appearing that there were other matters which might probably enough be the reason, or occasion of the Earl's not immediately entering upon these regulations?

It appears by what Mr. Lightboun has said, that the Earl was very willing and desirous of having these matters regulated; and that when he first informed the Earl that he had something to offer to his consideration in relation thereto, the Earl seemed very glad, and mightily pleased with the proposals, and gave him all due encouragement.

It appears, my lords, that after some time taken by Mr. Lightboun, to discourse the Masters upon this head, he wrote a letter to the Earl, containing several proposals for the regulating the affairs of the Masters; and your lordships will observe the times and manner of the Earl's sending for, and pressing the Masters to bring in their accompts, which, notwithstanding the different turn that has been endeavoured to be given to it, we humbly insist upon it, appears to have been done, in order the better to enable the Earl to judge and regulate these matters.

As there were proposals for regulating the conduct of the Masters, in respect of the suitors, so several grievances, which the Masters were supposed to labour under, and in which the suitors too were supposed to be concerned, were represented to the Earl; and, amongst others, that of money being ordered to be paid into the hands of the Usher of the Court, instead of the Masters; which was represented as a thing of ill consequence, and dangerous to the suitors of the Court, as well as injurious to the Masters. It appears likewise, that it was thought proper, if not necessary, to take all these matters into consideration together, that the intended regulation might be entire, and not by piece-meal; and Mr. Lightboun himself was of that opinion, as well as Mr. Holford. And though it is alleged, that the Earl was credibly informed that the sufficiency of some of the Masters was much suspected, and consequently that a more immediate regard should have been had to what concerned the effects in their hands; yet when your lordships consider how that stands upon Mr. Lightboun's evidence; that it was only a

general intimation, without naming any particular person, and that Mr. Lightboun declared he had no certain ground for such suspicion; it will not, we hope, be thought a fault not to single out that part of the intended regulation; especially when the same witness informs your lordships, that it was as impracticable for the Masters to have given an adequate, that is, a proper security, as for the great officers of the Exchequer, or the treasurers of the South Sea, or other great companies to do so. And your lordships will be pleased to think it well deserves consideration, whether it was in the Earl's power to compel the Masters to give even such security as they could? And if it should be said, that if they would not have complied, he might have ordered the money out of their hands; it will require time to consider where, in such case, he must have placed those effects? It would have been as extraordinary to have required security from the Masters which came in afterwards, and so to have put them upon a foot different from the others, when it was under consideration how to settle the whole. But, my lords, the event has shewn, that there was not so much occasion for so speedy a precaution in this matter, for the purpose for which it was then principally intended, which was the preventing the Masters from embezzling the securities of the suitors in their hands, since there is no occasion of complaint in that respect, they having been all delivered up, and the deficiencies which have happened have been in the cash in their hands, of which there was then so little apprehension or likelihood, that the preventing it was one of the things the least under consideration. So short-sighted and uncertain is human prudence! So different the judgments made of things in prospect only from what they are in experience! I make no question but your lordships will have a due regard thereto, and make all equitable allowances on that account.

Your lordships have been farther informed, that in order to settle these matters, several meetings were had, and among the rest, one very solemn one, at which were present both the Earl and the Master of the Rolls. I need not trouble your lordships with a repetition of what passed there; it is sufficient to observe, that nothing being settled, the Earl, whose mind was intent upon this affair, proposed some expedients to facilitate matters; particularly, that if the Masters would quit their pretensions to a co-ordinate power of judicature with the Master of the Rolls, that matters might be made easy, in respect of the ordering the payments of the money: but this would not be complied with. And when it was found by experience impracticable to bring any thing about, with the agreement of the parties, the Earl declared that he would take the whole matter into his consideration; and since he could not have the concurrence of others, he himself would regulate these matters as soon as he could. Upon the whole of the evidence offered upon this Article, more especially from what Mr. Lightboun and Mr. Holford have said, it plainly appears, that for a considerable time past, even from the latter end of the year 1721, there has been an intention of regulating the offices of the Masters of the Court of Chancery; that such intention has been pursued, and several steps taken, and endeavours used to bring it to effect; and your lordships, I hope, perceive the many difficulties that have interposed, and will not be at a loss to find reasons for the Earl's not having actually made these regulations, very different from the distant view of an unjust gain.

My lords, the business of reformation, however desirable it may be, is in all instances attended with difficulties, and in the present case those difficulties have been encreased by the different and jarring interest of the parties concerned; which, at least, prevented their concurrence in such reformation, and in a great measure deprived the Earl of the benefit of the advice of those who were the most able to inform him what was fit to be done.

Your lordships are sensible how great a portion of the Earl's time must necessarily be taken up in the dispatch of the ordinary business of that Court, and in his attendance upon the public functions of his office; and if, under these circumstances, he has not been able to bring his good intentions to effect, and complete them, before it was put out of his power so to do, your lordships, we hope, will think it more his misfortune than his fault, and that he is not to be reputed guilty of any neglect or omission in that respect, which can be adjudged to be criminal. We shall not trouble your lordships with any evidence upon this Article, but submit it upon what has been already offered.

Mr. Robins. May it please your lordships, the last Article which the Managers for the honourable House of Commons have been pleased to close this solemn prosecution withal, is the Nineteenth; wherein they have endeavoured to represent the Earl as designing to abuse and impose upon his most sacred majesty, for the sake of screening and protecting the Masters from a parliamentary enquiry, and to keep up the price and credit of their offices.

But, my lords, we humbly hope no evidence appears to have been given that does, in the least, support or prove any such designs in the Earl.

It is true, indeed, that when his majesty was graciously pleased to order the Masters' accompts to be laid before the committee of lords of the council, in order to inspect the same, that the Earl, in obedience to his majesty's commands, thought he could not be too zealous in giving orders for their preparing and getting the same ready, and therefore ordered them immediately to set about it.

And when some of them objected, that it was impossible to have them ready by the time expected, the 10th of November last, especially Mr. Holford's, which was to be an accompt of twelve years, that the Earl however ordered

them to be got ready in the best manner they could, and told them, if it should appear they wanted more time to make them perfect, that on application it would, without doubt, be granted.

After which your lordships have heard, that at a meeting of most of the Masters at Mr. Edwards's, when Mr. Cottingham came in, he proposed to them, some say, three things, others two; but all of them agree in substance, that it was to have their accompts and securities inspected, and to produce the balance of cash in their hands, if it should be required.

And as to the inspecting of their accompts and securities, your lordships have been pleased to observe, that not one of them appeared to make any difficulty or objection to it, but, on the contrary, readily consented and agreed to it.

But as to the producing their balance of cash, they were something startled at that, as not knowing what was intended by it; and therefore asked Mr. Cottingham if they were only to produce or shew it, or if it was going to be taken away from them.

And though Mr. Cottingham's answer was, that they were only to produce it, as he understood, yet several of them appeared to be very jealous that it was going to be taken out of their hands; and Mr. Edwards, one of the Masters, expressly said so, and therefore advised them to get it ready as soon as they could.

But your lordships have been pleased to observe, that whatever they understood by it, yet not one of them said, or so much as insinuated to Mr. Cottingham, that they were not able to answer or make good their balance of cash, only that some of them had it not all ready immediately; and Mr. John Bennet said, it could not be expected they should keep it all by them, for fear of having their throats cut, and that therefore they must have some reasonable time given them to raise it in; and Mr. Conway expressly swears, that he apprehended they all said they were able and sufficient to produce their cash and effects.

And, my lords, it seems very natural and reasonable to believe that they did say so, or at least that Mr. Cottingham understood it so, because when some of them asked, whether they were to produce it in specie, or whether Bank notes, or goldsmiths' notes would not do as well, he made answer, it certainly would do as well, and therefore advised those that had not such notes ready by them to provide them, and to stand by and assist one another.

Now, my lords, with great submission, all this seems to be a very natural, plain and artless representation of this meeting: and when Mr. Cottingham had thus acquainted the Masters what was expected from them, and had assurances from them all, that they were ready and willing to comply with what had been proposed; can there be any room to doubt but that the noble Earl was very well pleased with this account from Mr. Cottingham? And therefore when they met after, at the Earl's house on the 10th of November, no wonder he did not particularly ask them the question, whether they were able and sufficient to pay or make good the balance of their cash, for this Mr. Cottingham had before assured him they were, and therefore no need for the Earl to ask the question over again.

And Mr. Lovibond, one of the Masters, swears expressly, not only that he himself was ready and willing to pay and produce his own balance, but that, from what passed at the Earl's house, he believed or thought all the rest of the Masters were so too.

Now, my lords, if this be so, if the noble Earl was fully satisfied that all the Masters were able to make good their accompts, and he was just then going to lay a state of them before the lords of the council; is it at all to be wondered at, that his lordship should give them his advice or opinion what form of words or subscription he thought would be most proper to express their meaning by?

And as he approved of the form made use of by Mr. Holford on that occasion, was it, or could it possibly be any crime in the Earl to advise the rest to subscribe, or under-write the same form to their accompts likewise?

And your lordships have been pleased to observe, from the evidence of all the Masters, that not one of them made any scruple or difficulty of it, but went into another room, as if they were really going to under-write the very same subscription to their accompts.

It is true, indeed, my lords, some of them, when they were got by themselves, were conscious they could not come up fully to it, and therefore varied the form as best suited their own circumstances.

But your lordships have been pleased likewise to observe, that the noble Earl was so far from being in any plot with the Masters to deceive his majesty or the lords of the council, that he took their accompts, with the subscriptions they had under-wrote, without so much as ever looking to see if they were conformable to Mr. Holford's subscription, and apprehended they really had been all the same, till upon reading them before the lords of the council the variance between them appeared.

But your lordships have not heard of one word of reproof given them by the Earl afterwards, for not observing his directions in making the subscription he desired.

If the Earl had had any design of imposing on his majesty or the council, by getting the Masters to under-write such a particular form of subscription to their accompts, would he not have been more careful, before he carried in those accompts to the council-board, to have seen that they had exactly pursued his orders for fear of a discovery?

Nay, my lords, can it possibly be imagined, but that when he came afterwards to find they had deceived him, and had not under-written the subscription, they pretended, and went out of the room seemingly on purpose to comply with:

I say, my lords, can it possibly be imagined, but that if the Earl had had any views or designs of his own on it, he would have severely rebuked and reprimanded them afterwards for not observing his directions:

But your lordships have not heard one word of proof that the Earl complained of, or ever said any thing afterwards to the Masters about it.

Now, my lords, if this be so, can there possibly be a greater or stronger concurrence of circumstances to show, that the advice or encouragement which the Earl afterwards gave the Masters to assist and supply each other with money and effects, and represented to them that it would be for their honour and service to appear able and sufficient; I say, my lords, can any thing in the world be more unnatural than to imagine, that by this the Earl meant to advise them to make a false shew and appearance?

They had before assured him, or given him the strongest reasons possible to believe, that they could make a true show and appearance. Why then should he advise them to make a false show and appearance? What end or purpose in the world could this serve, either for themselves or his lordship?

This surely, my lords, could never be the Earl's meaning: or if it were whilst he was under a persuasion that they were all able and sufficient to answer and make good the balance of their accompts, if he meant to advise them to make a false show and appearance, it must have been by advising them to conceal part of their cash and effects, for fear the world should really take their words, and be of opinion that they were as able and sufficient to make good their accompts, as they had under their hands acknowledged themselves to be.

But, my lords, as the construction the other way is not only most natural, but also consistent and agreeable with all that had before passed on that occasion, surely, my lords, it must be a strange wresting and perverting of words to understand them otherwise.

The sum of this whole Article, my lords, is this: The Masters were on a sudden called upon to bring in their accompts of cash and effects, and they did so, and declared, at the same time, that they were able and willing to make good the same on a reasonable time given them for raising the money; but being afterwards called upon for their money sooner than they expected, and applying to the Earl for his advice and directions what to do in it, he advises them to assist and supply one another with money and effects, till their own could be gotten in; tells them it would be for their honour and service to appear able and sufficient, and that he would not have them let the world see, at a time when there had been so much clamour and noise about them, that they were not always ready, even at a minute's warning, to make good their accompts.

This, my lords, is the whole of this grievous complaint against the Earl; and as it seems to be nothing but a piece of good advice in the Earl given to the Masters for their own sakes, in great sincerity, and friendship, as the Earl expresses himself in his Answer, without any possibility of advantage to the Earl himself, we humbly hope your lordships will not think it worthy of a place in this Impeachment.

Com. Serj. My lords, we shall not give your lordships much trouble on this Article, we shall only call Mr. Holford.

Mr. *Holford* not then appearing, Mr. *Cottingham* was called in again.

Serj *Probyn.* My lords, we desire that Mr. Cottingham may inform your lordships of the time the Masters had the letter which he refers to, and which he delivered, whereby the accompts are directed to be brought in? We did desire Mr. Holford to bring it up with him: If Mr. Holford hath not the letter, and it is not among the Masters, we must examine Mr. Cottingham about it.

L. C. J. *King.* Mr. Holford is come.

Serj. *Probyn.* This is the copy of a letter, the original of which Mr. Holford hath; if he hath it not here, I hope your lordships will give leave to read the copy. My lords, I desire that Mr. Holford may give your lordships an account of this letter.

Holford. My lords, I have it not; Mr. Kynaston did inform me just now that he believed it might be in his custody, but he hath it not here.

Serj. *Probyn.* Your lordships will give us leave to examine Mr. Cottingham.

Cottingham. My lords, there was an order made, dated the 3d of November last, of which my clerk made a copy. I can't say I examined it myself: The order is, "Let the several Masters of the High Court of Chancery forthwith prepare and deliver to me a perfect account of the money in their hands, therein distinguishing, in several columns,

"The names of the parties to the cause.

"The dates of the orders for bringing in money or securities.

"The time of bringing in each sum.—Particularly expressing the sums transferred and paid to them at their coming into their office in the first place.

"How the same hath been disposed.

"What sums paid out, and to whom.

"What invested in securities.

"When, and by what order.—Specifying the securities, by dates, numbers, &c.

"Where the securities are at present.

"What money remains in their hands.

"Where the same now is.

"*Nov.* 3, 1724. MACCLESFIELD, C."

Com. Serj. My lords, we beg leave to observe, that this order is very much the same with the directions given by the noble lord before to bring in their accompts; but upon the nature of the thing, there seems to be a very good reason why they did not comply punctually with it.

Mr. *Plummer*. Upon this observation, my lords, I beg leave to ask this witness whether the Masters have not given in some account, notwithstanding the difficulty of the method?

Cottingham. Yes, my lords, they have.

E. of *Macc*. Mr. Holford will inform your lordships of this.

Holford. I believe this is a copy of the order given by my lord Macclesfield for bringing in our accompts in November last.

Serj. *Probyn*. I desire he may be asked, whether the Masters were able to make up the accompts pursuant to the directions given in that order?

Holford. I believe it was the next day after this was sent, that Mr. Cottingham did inform me of it; I had not seen it, I was then at Westminster, sitting in Court with my lord Macclesfield; after the Court was up I went into the little room behind the Court with my lord, and I did say, I thought it would be very tedious to do exactly as this order directed, because it would require a transcribing of every particular that each Master in the Court had ever paid and received for several years, even where causes were ended many years ago, and that I thought it an impracticable thing. My lord told me that must be no objection to the bringing in of the accompts; if we could not do as well as he wished, we should do it as well as we could; and desired them to be ready, that they might be brought in by the time prefixed.

Com. Serj. I desire he may be asked, whether there were any arguments used by my lord to recommend dispatch in this matter?

Holford. My lord recommended it to me to be sure to have the accompt ready by the time; I think he said it was to be delivered in to the council by such a day.

Com. Serj. I desire he may inform your lordships, if nothing was said about making an excuse, a pretence for delaying the accompts?

Holford. My lord did desire that they might be prepared according to those directions, but said, This must be no excuse, for not bringing in the accompts as well as you can by the time.

Mr. *Plummer*. When this accompt was asked for, how long was it before it came in?

Holford. Three or four days, or a week.

Mr. *Plummer*. And you gave them in complete and right, fully and amply.

Holford. Yes, there were some little mistakes which were rectified afterwards, very small ones.

Com. Serj. By reason of this question that hath been asked, give me leave to trouble your lordships with asking another, whether in the accompt delivered in, there was any thing more than the balance of the accompt?

Holford. Yes, the accompt I delivered in was an accompt of every particular cause, and of the money and securities in every cause, and I did add the solicitors names in every cause, as far as I knew; I believe all the others were not so.

Com. Serj. How were the others?

Holford. I believe the others were the same, only not the solicitors' names.

Com. Serj. I don't mean that, but whether there was not the balance of each particular accompt delivered in?

Holford. There was the balance of the particular causes, and the whole summed up together.

Serj. *Probyn*. I desire he may be asked, whether it was practicable to give in their accompts in the method directed within the time prescribed them?

Holford. It was not.

Serj. *Probyn*. I desire he would inform your lordships, whether they have not been called upon frequently to hasten their accompts?

Com. Serj. I desire he may be asked, whe they have been since called upon by the honourable committee of the council, to bring in their accompts according to the said method?

E. of *Macc*. I desire he may be asked, whether after this accompt brought in, and the balance made upon every cause, they have been since called upon to make up the accompt according to the first instructions, or not?

Holford. We have not been required to pursue the former instructions.

Com. Serj. If the gentlemen of the House of Commons have done as to this Article, we have done. My lords, we shall now beg leave to call some witnesses to the establishing the reputation of Mr. Cottingham; when one side have endeavoured to lessen his credit, it will be necessary for the other side to call witnesses to confirm his credit. As to the testimony he hath given, it is very material, as it stands in opposition to the evidence of others; though it be not directly contradicted, yet it is very different from some accounts which your lordships have received from some of the Masters, particularly from Mr. Thomas Bennet: And as for the Managers of the House of Commons, notwithstanding he was called as a witness by themselves, though they have not said in direct terms that he is a person not to be credited, yet calling him a black minister of iniquity, and using a great number of such like other expressions seem to carry some insinuation, as if Mr. Cottingham was not a man of that integrity as I believe all that know him will bear testimony to. We beg leave, therefore, to call a few of that number as witnesses to his character and reputation, who have known him for several years, and have had a full opportunity of knowing his character and behaviour in the several stations he has been in.

Mr. *Goldesbrough* called.

Serj. *Probyn*. My lords, I desire he may be asked, how long he hath been acquainted with Mr. Cottingham?

Goldesbrough. I have been acquainted with Mr. Cottingham upwards of twenty years.

Serj. *Probyn*. I desire he would inform your lordships, during his acquaintance with him, what hath been his character?

Goldesbrough. All the time he was a solicitor,

I observed him to have a good character; he behaved himself with all integrity and fidelity as ever I knew any body of his profession.

Serj. *Probyn.* You speak as to his general character.

Goldesbrough. I never heard he had any blemish on his reputation, he always maintained a very fair character.

Serj. *Probyn.* During the time he was secretary to the Lord Chancellor, how did he behave himself?

Goldesbrough. He bore a very fair character in the place, as fair as ever any body did that went before him.

Mr. *Price* sworn.

Com. Serj. We desire he may give your lordships an account, what he knows of the character of Mr. Cottingham, and how long he hath known him.

Price. My lords, I have known him upwards of twenty years, I never knew any body say any thing amiss of him, I always took him to be a very fair and honest man: I know no man in his place behaved himself better than he hath done.

Com. Serj. We desire to ask not only to what Mr. Price's opinion is, but to what is the opinion of others, as to his general character?

Price. I believe, if you ask his character of an hundred people, ninety of them will give him rather a greater character.

Com. Serj. And as to the remaining ten, what character doth he believe the remaining ten will give him?

Price. I believe that the remaining ten cannot justly charge him with any thing that is ill.

Mr. *Hickman* sworn.

Serj. *Probyn.* I desire Mr. Hickman may likewise give your lordships an account, how long he hath known Mr. Cottingham?

Hickman. I have known Mr. Cottingham 30 years, I believe; he had always a very good character, he was clerk to me for two years, he was a diligent, faithful clerk, and hath had a very good character ever since, and I never heard any thing to the contrary.

Mr. *Blithman* sworn.

Serj. *Probyn.* My lords, we have a great number to this purpose; I desire you would inform my lords, how long you have known Mr. Cottingham, and what his character is?

Blithman. My lords, I have known, and been intimately acquainted with Mr. Cottingham, for above 20 years; while he was a practiser in the Court of Chancery, we were now and then concerned one against another in business, and I observed him to act with great diligence for his clients, and in a fair way of practice in respect to his adversaries; he had the character of the practisers of the Court of Chancery in general, for being a very honest and fair man; after he was promoted to be secretary to my lord Macclesfield, every practiser of the Court that had any business must have frequent recourse to him, and he was observed to discharge that office with great justice and dispatch to the suitors, with great civility to the practisers, and with a strict regard to the honour of his master and the Court; he was content with his just fees, without ever demanding or expecting more on pretence of expedition, or upon any other account. In general, I took him for a very honest man, and he was always so reputed during the time that I knew him.

Serj. *Probyn.* My lords, we might apply to some of the learned Managers themselves, were it proper upon this occasion, but we hope his character is so clearly established, by what evidence has been already offered, that there is no necessity for troubling your lordships with any more on this head: but we shall trouble your lordships with one piece of evidence more, of a different kind, which the noble lord is with a great deal of difficulty obliged to submit to, and that relates to the private conduct of himself, of which many enjoy the benefits, and all were enjoined and obliged to keep secret; but now it is become necessary to make known, since he hath been represented in public as a person full of corruption, that hath studied nothing in the whole conduct of his life, but the amassing great riches to himself, in oppression of his majesty's subjects; it is now become necessary, for the vindication of his lordship's innocence, to shew that his actions (which best bespeak the intention) have been of a different nature; that as his lordship hath received great bounties from his majesty, so he hath been as liberal in sharing them with those who have wanted his relief. Multitudes of instances might be given of this kind, but we shall only lay some few before your lordships, and then beg leave to submit to your consideration, whether it be possible to suppose, that a noble lord, whose heart was so charitably inclined to relieve the afflicted who applied to him, and to seek opportunities of doing good to strangers who were no ways known to him, could be guilty of actions such as his have been represented by the Managers of the House of Commons. How can these things be reconciled, that a man, truly religious, truly virtuous and charitable, should be guilty of oppression, injustice, avarice, and corruption? We beg leave to lay some few instances of this nature before your lordships, and then submit their weight to your lordships' great judgment.

Com. Serj. I beg leave to observe, that in a great many Articles, the intention being what the Managers have much relied upon, we humbly apprehend we have cleared the noble lord from those intentions he is charged with, by what we have already offered to your lordships; but if any doubt should still remain, when it shall appear that he was a constant benefactor to the oppressed and afflicted, that a constant spirit of benevolence hath reigned in the breast of this noble lord towards mankind, you will think it impossible for a man to be so

contradictory to himself, that at the same time as he was doing all the good he could in private, he should be guilty of avarice, corruption and oppression in the most public manner. These qualities are so inconsistent, that they could not reign in the same breast at one and same time, for that reason we shall beg leave to mention a few of the great many instances we might produce on this head; and first we desire that Mr. Oaker may be called.

Mr. *Oaker* sworn.

Serj. *Probyn.* My lords, I desire that Mr. Oaker may give your lordships an account, how long he hath been employed under the noble Earl within the bar?

Oaker. I served his lordship all the time that his lordship had the great seal.

Serj. *Probyn.* I desire he may give a general account, during all the time that he served his lordship, how far he hath been privy to any charitable actions he hath done?

Oaker. My lords, I have the names of some few in my hand, I can only tell the names and sums of such as accidentally came in my way; for his lordship always did those actions privately, and with his own hands, if it could conveniently be. When I first came to serve his lordship, having heard his lordship's character of being very bountiful to almost every body that came in his way, I therefore endeavoured to inform myself more particularly from such persons as I apprehended applied to him for any assistance of that nature. The first that I remember was one Mr. Brown, who had been author of several practical books in the law; his lordship was pleased for some years before I acted under him, to pay for him 24*s.* a month for his board and subsistance, besides clothes and pocket-money; the person that used to pay it being absent in my time, I paid it for near seven years, till Christmas last, when he died.

Serj. *Probyn.* At the time he died, how old was he?

Oaker. He said he was on Bartholomew day last aged 102. As I have been informed, my lord sent a surgeon and an apothecary to attend him, and paid them, and the expence of his funeral; and the whole that came within my knowledge was about 120*l.* Afterwards there were two clergymen recommended to his lordship for a living that was in his disposal; my lord could not soon determine which to give it to; one of them was a poor curate in Surrey at Thames Ditton: This poor man complained, that he could not attend longer in town, nor had money to carry him home; my lord gave him a guinea, and told him he might go home, he need not stay, but should be sent to when he had determined what to do for him. A little while after he came to town again, and said that it being reported that his lordship would give him a living, he was turned out of his curacy, and being an inmate, was ordered by the officers of the parish to quit the parish, but that he had not money to remove his family; and my lord being told of that, sent for him, and gave him a sum of money in a paper; I asked the clergyman what it was he gave him, and he said 20 guineas. He had soon after a living given him by my lord, in Kent, and then as he was removing his family to his living, they were, here in town by the way, taken ill of the measles; upon which the poor gentleman wanting money to proceed on his journey, came again to my lord, and his lordship gave him 20 guineas more, as he told me; and I believe his lordship hath given him several times since, but I don't know the particulars, neither had I known any of those I have mentioned, had not the poor clergyman himself told me of them.

Com. Serj. What is his name, and where is his living?

Oaker. His name was Vigurs, and his living is near Sittingbourne in Kent. There was one man, a converted Jew, I believe he is here himself; he hath had of my lord 70 or 80*l.* There is one Thwaites, a Quaker, who hath attended the Houses of Parliament long, and is very well known, hath had a pretty large sum of money, besides other assistance; 60*l.* I paid him at once by my lord's order. There is one Mr. Wickham, a gentleman in the navy, a half-pay officer; he had out-run that, and was in the Marshalsea prison, and could not make up his matters; a friend of his was personally acquainted with me, and said my lord had some knowledge of this officer, and desired me to acquaint him with his case, which I did, and his lordship said he had no acquaintance with him, but had known his father, and for his sake would clear him; and it being said he was in for about 30*l.* his lordship said if it came to 40 guineas he would pay it, so that it set him out of distress, and cleared him of all debts; the gentleman did make up his affairs, and my lord paid the money, and besides gave him a whole suit of clothes, double shoes and stockings, and wigs, and new sword and belt, fit to appear in the world again, which came to something above 40*l.* in the whole. Another poor clergyman my lord gave a living to, and he was very lame, and came to town to go into the cold bath; he happened to be arrested for an old demand of 36*l.* His wife came to my lord, who gave her money for present subsistance, and ordered me to take care that the whole affair should be made up, and the whole debt was cleared and discharged, and all the costs and charges paid out of his lordship's pocket. There are abundance of other small sums I might mention of the same kind, but it would be endless to trouble your lordships with them. Then there is another matter which I mention to your lordships, not so much for the value, as for the manner of doing it; a poor gentleman residing at the Bath, had a place given him, as he said, in Ireland, but had not money to carry him over, and therefore only begged 40*s.* to carry him over to Ireland; my lord ordered me to remit him five guineas, which he received, but afterwards he wrote word that he and

his family were ill at the time, and therefore had expended the money, and wanted the same supply again; my lord then ordered me to remit him 10 guineas more, which I did. Here is at your lordships' bar one Mr. Saunders, a clergyman who hath sundry times received of his lordship favours whilst a youth, and upon the foundation in the Charter House; and when he went from thence to the University his lordship gave him 40 guineas; and afterwards, when he was near going into orders, remitted him 60*l.* to clear all matters in the University, which I sent to Dr. Bentley by his lordship's order. I don't mention several other particulars, but they are very numerous, both what passed through my hands, as well as others of his lordship's servants; hardly a week passed without some instance of this kind.

Com. Serj. As you were under the great seal, you can inform my lords, when clergymen were admitted to their livings, whether his lordship has not frequently ordered their fees to be remitted them?

Oaker. My lord frequently gave orders to remit the fees of his own officers, and at other times his lordship paid the fees of the patent officers and stamps out of his own pocket; and hath given the clergymen money besides to pay their journies to their livings, and otherwise to sustain them, and to buy books.

Com. Serj. Do you remember Mr. Higgs?

Oaker. Mr. Higgs was greatly indebted and in prison; his lordship discharged him, and paid such debts as were insisted upon, to the value of about 90*l.*: he is there to give your lordships a particular account.

Dr. *Sayer.* As a great deal depends upon the manner of doing these things, I would ask him as to the manner in which they were done, whether in an ostentatious manner, or how?

Oaker. My lord did these generous actions merely as they fell in his way, and without mentioning them, or letting them be seen or known, as far as I could ever perceive; so that where I did not apply to his lordship myself for such people as came to me, I never knew it but by accident; and in cases where I was privy, my lord generally gave me more than was asked, his method being, as far as might be, to set persons entirely free, and to do them a full service.

Mr. *Hunt*, a clergyman, sworn.

Serj. *Probyn.* My lords, we desire that Mr. Hunt would recollect and give your lordships an account of what charitable acts he hath known done by the earl of Macclesfield?

Hunt. I have known my lord to be a very generous and noble patron: I can speak from several instances, relating not only to myself, but to several other gentlemen of the University of Oxford. The first time I had the honour of being known to his lordship, was about Whitsuntide 1722, upon the recommendation of one Mr. Thornbury, vicar of Thame in Oxfordshire. The noble lord asked Mr. Thornbury what persons he knew in the University that were inclinable to be studious: Mr. Thornbury was so kind as to mention me as one: upon which his lordship sent for me to dine with him the day after; I carried him some of the private exercises that I had done in the University, which his lordship read over, and was so kind as to approve. His lordship kept me with him several days, and desired to have more conversation with me; and he dismissed me with a generous present of 20 guineas, telling me he should be glad to see me when he came to Shirburn, and that he designed to make me a present now and then till he could do something else for me. About Christmas after was the next time I waited on my lord: I carried him again some of my University exercises, which his lordship perused, and was so favourable as not to mislike them: His lordship dismissed me at that time with another generous present of 20 guineas, and farther assurances of future favours. About this time I had received a letter from Mr. Gagnier, deputy professor of Arabic in the University of Oxford, wherein he complained to me, that he had been ill used by some persons in the University, for having writ a poem in praise of her Royal Highness. This I related to his lordship, his lordship expressed a great deal of concern for his misfortune, pitied his case, and sent him by me a present of 20 guineas. The third time I had the honour to wait upon his lordship was about Michaelmas 1723, when I received likewise a present of 20 guineas: I should have also mentioned, that I received other smaller presents from his lordship, 5 guineas at one time, and 1 guinea at another. The last time I had the honour of waiting on his lordship and receiving his bounty, was about Easter 1724, when his lordship made me the usual generous present of 20 guineas, and was so kind as to send by me 30 guineas more, viz. 15 to Mr. Hutchinson, and 15 to Mr. Greenway; so that within the space of 2 years I received of his lordship's bounty, for the use of myself and the gentlemen of my acquaintance, 136 guineas, upon no other account, and for no consideration whatever, but to encourage us in our studies, and support us in the University.

Dr. *Sayer.* I would know whether the 30 guineas were looked upon as a single bounty, or was it to be an annual charity?

Hunt. I believe so; they told me they had received it as such before; we all looked upon our several benefactions as to be continued.

Mr. *Smythys*, a clergyman, sworn.

Serj. *Probyn.* I desire he may give an account of what he knows of my lord Macclesfield's charities.

Smythys. My lords, in the year 1721 there became vacant the place of a Master of an hospital in the town of Colchester, in the disposal of my Lord Chancellor, to which Mastership king James the 1st had annexed the cure of souls of a parish adjoining, and which parish had no other provision for a minister. The

ormer Master had taken no notice of the pa-ish, nor had any care been taken time out of mind (as I have been informed by the inhabi-ants of the parish) of either burying their dead, r baptizing their infants. My Lord Chan-ellor being (as I have been told) informed of his, sent to me to know if I would accept of he Master's place. I would not mistake, my ord's chaplain sent me word, if I would accept f the place, and let him know my Christian ame, his lordship would send me the grant of . I did so, and then my lord was pleased to nquire into the nature of the thing. I in-ormed his lordship that no care was taken of he parish at all, though I apprehended the mas-er of the hospital ought to take care of it. My ord then was pleased to give me the grant of he hospital, and obliged me to a particular care f the parish; and at the same time desired he to let him know what condition the church as in. I informed him that it was utterly un-it for divine service; none had been performed n it (as I had been informed) time out of mind; nd the parishioners were in such a condition of overty, that they were not capable of making t fit for divine worship. My lord then was leased to order me to acquaint him how much ould put the church in repair. Upon this I hought proper to apply to workmen for their dvice; and by their advice I informed his lord-hip 30*l.* would do it. My lord ordered me to et the workmen at work, and he would pay heir bills. Before the church was finished, hrough my unskilfulness, and the cunning of vorkmen (as I then thought) this 30*l.* would ot do. I acquainted his lordship with it; and he desired to know how much more would do. The workmen told me 10*l.* My lord ordered he workmen to proceed, and they should be aid the other 10*l.*; but by the falling of a vall, and other accidents, this money was not till enough. I was ashamed to betray my own ignorance, in suffering myself to be so im-posed upon by the workmen (as I imagined his ordship would think,) I determined to pay the est of the money myself; but being encou-aged by Dr. Sayer, I did inform his lordship of the condition we were in. I then received an unlimited commission to let the workmen finish the work, and send up their bills when they had done, which they did, and my lord immediately paid the money, which amounted o 52*l.* 6*s.* 11½*d.*

Dr. *Sayer.* I desire he may be asked what sort of parish this is, and what kind of people the inhabitants of it are?

Smythys. It is a poor parish, but not nume-rous; there is not one in the parish that is called Master; nor one, I believe, able to con-tribute a shilling towards a work of this kind, without hurting himself or his family.

Dr. *Sayer.* I desire he may be asked whe-ther the Earl has any relation to it, or any estate thereabouts?

Smythys. He hath no relation to the town, nor seat near it, nor any particular concern, that I know of, for any man belonging to it.

Mr. *Plumner.* If my lord Macclesfield thinks it decent to give this evidence, we do not think fit to oppose it.

Dr. *Sayer.* The charities laid out by my lord Macclesfield have been to fit out clergymen for parishes, and to provide churches for pa-rishes.

Mr. *John Meyer* sworn.

Serj. *Probyn.* I desire this witness to inform your lordships, whether he was not formerly a Jew?

Meyer. I was a Jew formerly.

Serj. *Probyn.* I desire he would give your lordships an account of his conversion, and what circumstances of life he was then in, and how he was relieved?

Meyer. I was by several misfortunes, and by the hardship of my relations, reduced to great extremities, after I was converted from Judaism.

Serj. *Probyn.* After you were converted, what charities have you received? Have you received any collection made for you by any person?

Meyer. I did apply myself to my lord Mac-clesfield for charity, by the recommendation of several worthy clergymen: upon which recom-mendation his lordship was pleased to bestow upon me a charity of 50 guineas. I was set up in a way of living in the parish of St. Ka-therine's, near the Tower: then the fire hap-pened there, and I was burnt out, after which I had a dangerous fit of sickness. His lord-ship got an account of the same, and sent me a second relief of 20 guineas. The same time that his lordship gave me 50 guineas, he sent 20 guineas to the reverend Mr. Shute, who was treasurer to the society for propagating the gospel in foreign parts.

Mr. *Edward Saunders* sworn.

Serj. *Probyn.* I desire he may give an ac-count of what he hath received of my lord Macclesfield's bounty?

Saunders. My lords, in the year 1713 the duke of Somerset, through the intercession of the earl of Macclesfield, put me into the Char-ter-house, where I was educated eight years and an half; all which time his lordship fur-nished me with books; and at my leaving of the school, he gave me 40 guineas for the bet-ter prosecuting my studies at Cambridge: in a year and an half after this, he gave me 60*l.* My lords, this was not all; for when I ac-quainted his lordship at my going into orders, that I owed some money at Cambridge, his lordship was pleased to give me 40 guineas more towards the discharging of my debts.

Mr. *Thornbury*, a clergyman, sworn.

Serj. *Probyn.* My lords, I desire he may inform your lordships what he knows of his lordship's charity?

Thornbury. My lords, what I have to inform your lordships of is this; that in the year 1721 about the latter end of July, some application

having been before made to my Lord Chancellor by my father, I had the honour to be sent for by his lordship to London. When I came to town, as it was my only business, so I made it my earliest care to wait upon his lordship, who was pleased to receive me with the greatest kindness and condescension, telling me he had some livings at that time in his disposal, one of which he intended for me; his lordship likewise offered, if I had a mind to see the livings, he would be at the expence of my journey, and that I should have my choice when I was come back; but I answered, I would refer that to his lordship's pleasure. In a few days after, he ordered his secretary of the presentations to prepare a presentation of me to a vicarage in Somersetshire, called Ninehead. When the presentation was sealed, and I had received instructions to go and wait upon his lordship for it, he was graciously pleased not only to give me the presentation, but also discharged the whole fees, and likewise made me a present of 100 guineas to buy me books withal.

Mr. *T. Withers*, and Mr. *Henshaw* called, who not immediately appearing,

Serj. *Probyn*. My lords, I am told here is a reverend prelate, who will willingly stand up in his place, and give your lordships an account of what he knows of some of my lord Macclesfield's charity.

The Lord Bishop of *Oxford* stands up.

Serj. *Probyn*. I desire your lordship would give an account of what you know of this matter?

B. of *Oxford*. My lords, the question put to me is concerning my lord Macclesfield's benefactions and encouragement to learning in the university of Oxford. I am a good witness of it; for my lord some time since desired me to recommend a number of young men to him, whom I thought proper objects of his favour, and like to make a considerable progress in law, physic, divinity, or any other branch of learning. He said he was willing to bestow a considerable annual stipend on them, for no other end but to enable them to buy books, and encourage them to follow their studies; and this without any regard to party, but merely for the promoting of learning in the university. I recommended several persons to him, and enquired into the characters of some who were recommended by others, and have no reason to doubt but that every one that was thought deserving had a considerable allowance. I can't charge my memory with particular sums, but believe his lordship said he was willing in the whole to expend this way 4 or 500*l.* every year. This is the sum of what I know; if your lordships desire to be informed of any thing more particularly, I am ready to give an answer to the best of my knowledge.

Com. Serj. My lords, we have now gone through our evidence, and I shall beg your lordships' indulgence for the making some short observations upon what has been offered in defence of the noble Earl, now at your lordships' bar; and as this proceeding has already been drawn out to a very great length, I am sensible it will become me, to use as much brevity as may be. I shall, however, before I proceed, beg leave to trespass upon your lordships' patience so far as to say, that if in the course of this proceeding, any thing should have slipped from us who are of counsel for the Earl, which might not be so exactly suitable to the very great respect and deference, which is due from every one to this august assembly, I hope your lordships will, in your great goodness, impute it only to the inadvertency, which the variety of incidents, and hurry attending proceedings of this nature, may reasonably be supposed to occasion, and as such excuse it.

We hope, my lords, that what has been humbly offered to your consideration, in behalf of this noble earl, has made him appear a person very different from what he has been represented to be by the gentlemen of the House of Commons; and I am apt to persuade myself, that if they had been as well informed beforehand of what he had to say in his vindication, as they were of what they had to object to his conduct, your lordships would have been spared the great trouble occasioned by this long prosecution.

It is, my lords, the peculiar happiness of our constitution, to have in the different parts of it, all the requisites necessary and proper for the preservation of the peace and welfare of those who have the good fortune to live under it. In those, whose part it is, like centinels, to watch for and guard the liberties and safety of the people; who are the grand inquisitors, to search into, and expose every thing that has even the appearance of being hurtful or dangerous to the liberties or properties of those they represent, vigour, warmth, zeal, I had almost said some degree of passion, seem proper qualifications; whilst calmness, moderation, and patience, not altogether without tenderness and mercy, are the proper characteristics of those who by the constitution are to determine and judge. And, my lords, I may venture to say, that, to the glory of our nation, all these qualities have been exercised, and every part of our constitution hath exerted itself upon occasion of this proceeding: His majesty's great condescension, in readily laying this matter before his parliament; the zeal and vigour of the House of Commons in examining into it; the great abilities and industry which the learned gentlemen, who have had the honour of managing this prosecution, have shewn, (they will pardon me, I hope, for saying, I could have wished it had been attended with something less harshness and severity,) and your lordships' great goodness and patience, hitherto so conspicuous, and of the continuance of which there is not the least reason to doubt, are so many illustrious proofs of it.

Give me leave, my lords, to proceed farther,

and mention the part which the noble Earl at the bar hath had in this affair. His readiness, when after his endeavours for that purpose, he found the thorough reformation of the Court of Chancery a work too difficult for him singly to effect, in laying the affair before his majesty in council; the seasonable and proper orders he afterwards issued out upon that occasion; and his zeal in pressing to have them immediately complied with; leave him still, we hope, some share of the reputation and merit of what has been or is likely to be done towards the reformation of that court. Nor will your lordships be at a loss, to what cause to ascribe this behaviour of the Earl, notwithstanding the representations which have been made of him; when you shall consider the steady affection and zeal for our constitution, which on all occasions have so remarkably appeared in him. Your lordships, no doubt, remember those times and conjunctures, which it was thought required not only good wishes and affection, but vigor likewise and courage, to support and preserve to us the continuance of our constitution. Then it was, and for that end, that this noble lord so eminently exerted all those great abilities he was master of; and that with such success, as gained him the approbation of his majesty, who thought his services so signal as to justify his munificence towards him, and his goodness in raising him to so great honour. And can it easily be thought, my lords, that one so qualified, so affectioned, so distinguished, should enter into a wild design of deceiving both king and parliament? Or that he should enter into it, and carry it on in so poor and indiscreet a manner, as is suggested in the Charge against him? In a manner so void of thought and contrivance, that it relishes more of madness than any thing else. Suppose he could be thought capable of attempting to conceal matters that were so notorious to every body, and that by a means which from the very nature of it, must in some short time have betrayed the contrivance; yet surely, my lords, his fears and apprehensions would have restrained him from communicating himself in a matter of so high concern, without distinction, to so many persons as were then supposed to be present; that he should publicly give such orders as would certainly expose him to the resentment of his majesty and both Houses of Parliament, in hopes that such a secret would be kept by so many people as are supposed to be concerned in it; surely, my lords, is a charge of so extraordinary a nature, as will require better proof than what arises from uncertain expressions, in discourse with a number of people at the same time, and they in so great a hurry and confusion, that there was very great room for misapprehensions, and where it was easy for one to mistake what was said to another, as if spoke to himself; and from hence it proceeded, as I presume, that the account given of that transaction, by the gentlemen concerned in it, is so various and uncertain, that we humbly hope your lordships will not think it reasonable to be relied on, as a proof of such a charge.

My lords, the foundation of this whole complaint against the Earl is his acceptance of presents or gratuities, upon the disposal of places; or, as the gentlemen of the House of Commons are pleased to style it, the selling of places, principally those of the Masters of the Court of Chancery. We have admitted the facts, but without admitting those circumstances which accompany it, as it stands charged in the several Articles for that purpose; and we hope we have satisfied your lordships that it was no ways illegal to act as the Earl hath done upon those occasions. To support our reasoning upon that head, we proposed to shew to your lordships, what the sense and opinion of divers great and learned men had been in respect to the law in that point, from their own practice and behaviour: And we hope that the evidence which hath been offered for that purpose, hath plainly made it out, that the Earl hath the constant usage of his predecessors in that office, as well as of other great persons in other stations, to countenance what he hath done upon such occasions, and that without any marks of parliamentary resentment. If this noble lord stood in need of an excuse for having taken presents, how effectual would this be for that purpose? For sure, my lords, if it were allowed that he had erred in this matter, yet after such great examples, your lordships would think it an error only, and not an offence which deserved a heavy censure.

The rest of the Articles have so near a relation to the charge of taking money, being only aggravations of that matter, under the several circumstances therein contained, that I humbly apprehend, they do in a great measure depend upon, and will stand or fall together with it. And as the evidence which has been given in relation to them, and the observations made thereon, have been so full, and are yet so fresh in your lordships' memories, I will avoid troubling your lordships with a needless repetition of any thing upon those heads.

My lords, the source of all the evils here complained of in the Earl is supposed to be avarice: every thing is ascribed to an immoderate thirst after gain, an irregular desire of amassing wealth. And great endeavours have been used to persuade your lordships, that the Earl was so wholly tainted, so thoroughly possessed with this vice, that he had nothing in view but to gratify it; and every single action of his had a tendency that way. But sure, my lords, the evidence just now laid before your lordships, shews a spirit and temper of mind far different from that, and totally inconsistent with it. And none, I hope, will object against our having entered into a proof of that nature; there are some occasions, and surely this is one, that will justify the most modest man in publishing his own good deeds; and upon which even charitable acts, at first intended (as they ought) to be buried in silence, and known to none but.

the great rewarder of them, may be withdrawn from their privacy, and disclosed to public view.

My lords, the instances which we have produced are not of pompous charities; we should then, no doubt, have been told that vanity and ostentation had the greatest share in them: had they been a few instances only which were laid before your lordships, though far exceeding in value those which have now appeared, it would perhaps have been said, that those were starts and fits of charity: but your lordships will observe that these have flowed in a continual stream, and can be owing to nothing but a constant habitual benevolence towards mankind, a regular and continual inclination to do good. And can such a temper and disposition of mind be consistent with insatiable avarice, base corruption, and merciless cruelty, in spoiling and oppressing widows, orphans, and lunatics, and such too, who were under his guardianship and protection?

My lords, we hope it will be thought impossible for such opposite sentiments to reign in the same breast, at the same time; and that, at least where any thing may appear doubtful in the Earl's words or actions, not only the received notion of our law, of presuming always in favour of innocence, but this benignity of temper in the Earl will determine your lordships to consider it in the most favourable light, and never to intend any thing harsh, which will admit of a milder construction.

The cries and tears of widows and orphans have been artfully introduced, to raise your lordships' compassion and indignation upon this occasion. It is no wonder, my lords, that women and children should be frightened at the first appearance of the deficiency in the suitors' effects, which was represented in so terrible a view; but we hope, my lords, the terror is sunk with the deficiencies, and that in a great measure these cries are hushed, and tears dried up, now it already appears (as we hope it evidently does) that no very considerable loss is likely to happen to the suitors, and that the prospect of its being lessened still improves.

Under these circumstances should your lordships think (which we humbly hope there is no ground to suppose) that the Earl has fallen into any mistakes; yet when his Majesty, your Lordships, and the Commons, have extended their clemency to those Masters, who have been the acknowledged, the immediate instruments and actors of the evils complained of, and of whatever may be prejudicial to the suitors; and the legislature hath interposed, to preserve them in the enjoyment of their offices; we hope the Earl would not be the only object on which your lordships' goodness did not shine. We rather hope your lordships will consider his misfortunes; and when you look upon the high eminency from whence he is fallen, and view him at your lordships' bar, scourged with the severest stripes the tongue can inflict, and (what can be more cutting?) a punishment, from which he had some reason to expect that his relation to your illustrious body might have protected him: that these circumstances will raise those generous sentiments of tenderness, which always dwell in noble breasts: a tenderness, no ways inconsistent with your lordships' justice, to which the Earl cheerfully submits himself; and that in imitation of the unerring Judge of all, whose vicegerents you are on this occasion, your lordships will in judgment remember mercy.

Mr. *Onslow.* I would not interrupt the gentleman that spoke last before he had ended; but I must now, before this gentleman goes on, inform your lordships that an incident hath happened, that the Managers think they are obliged to take notice of. The right reverend prelate is not by the Managers in the least suspected as to his veracity, and the truth of what he says; but in judicial proceedings, especially in a criminal case, as this is, the Managers think witnesses of all sorts are to be examined upon oath; not, as I have said, that they have any doubt of the reverend prelate's veracity; but for the sake of the precedent, and to prevent ill consequences, the Managers think his lordship must, as all other persons do, give his testimony upon oath: your lordships have precedents in the case of my lord Strafford* and others. The witnesses, if members of your lordships' House, are to be sworn at the table, and give their evidence in their place.

Serj. *Pengelly.* My lords, if it be insisted upon, that what the reverend prelate says should be taken as evidence; we humbly apprehend, according to the rule of evidence, he is to give his evidence upon oath. And this being so material an incident, and the prosecution having proceeded so far, we humbly beg leave to put your lordships in mind, that it is insisted upon in point of testimony, that the reverend prelate would be pleased to be sworn.

Lord *Lechmere.* No doubt but the reverend prelate ought to be sworn. It was not taken notice of. If the prelate be called upon as a witness, his evidence must be upon oath.

Bishop of *Oxford.* My lords, I should be very sorry to give any offence to your lordships; if the honourable Managers insist upon it that I take my oath, and your lordships direct me so to do, I am as willing to give my evidence upon oath, as without it. I submit it to your lordships, whether you will look upon the Journals, to see how the precedents stand?

Lord *Lechmere.* If it be insisted upon to look into the Journals, the parties must withdraw.

[Thereupon it was waved, and the Bishop sworn.†]

Bishop of *Oxford.* My lords, for the advancement and encouragement of learning in the

* This Case is in vol. 3, p. 1381.

† As to the swearing of lords of parliament, see in this Collection, vol. 2, p. 772; vol. 7, p. 1458; the examination of lords Townshend

University of Oxford, I remember my lord Macclesfield some time since, told me he was willing to allow considerable salaries to persons that were studious and sober; and that this should be done for the advancement of any sort of learning in general, without restraining it to any particular science or faculty, and without any relation to party, provided the persons were worthy: and I desire leave to own to your lordships, that otherwise I would not have had any concern in it. I did, my lords, recommend several persons, whom I thought proper objects of his lordship's bounty; and, at his lordship's request, enquired the characters of others, who had been before recommended to him. I have reason to believe that several of these succeeded in his lordship's favour, and received bountifully from him. I dare not, at this distance of time, charge my memory with particular sums, but believe that the noble lord assured me, he was willing, in the whole, to lay out this way 4 or 500*l.* a year. This, as near as I can remember, is the substance of what I said before.

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and Carteret in Kelly's Case, p. 470, of this volume, and Fortescue's Reports there referred to. See, too, Peake's Law of Evidence, p. 10.

In the Lords' Journal I find that on "May 26th, 1685, the earl of Radnor reported from the lords committees for privileges, That the earl of Plymouth informed their lordships, that his lordship being to give an answer in Chancery, he offered it to sir William Beversham, a Master in Chancery, upon his honour; but he refused to take it, unless his man might hold a Bible before his lordship's face: but that sir Timothy Baldwin (another Master) immediately took his answer, without laying the book before him.

"That it is the opinion of the committee, that a Master in Chancery refusing to take a peer's answer in Chancery upon his honour, without laying a Bible before him, is a breach of the privilege of peerage; and that your lordships will be pleased to make an Order, to be recorded in Chancery, to prevent such inconveniences for the future."

The House agreed to this Report, and made the ensuing Order:

"Upon report made to this House, from the lords committees for privileges, that it is the opinion of the said committee, that a Master in Chancery refusing to take a peer's answer there upon his honour, without laying a Bible before him, is a breach of the privilege of peerage; and also that this House would be pleased to make an Order, to be recorded in the Court of Chancery, to prevent the like inconveniences for the future: it is ordered, by the Lords spiritual and temporal in parliament assembled, That this House agrees with the lords committees for privileges in the said Report; and do farther order, that this Order be registered in the Court of Chancery, to prevent complaints of the like nature for the time to come:"

And sir William Beversham was ordered to attend the House on the next morning to receive the reprehension of the House, who attending accordingly, was severely reprimanded by the Lord Keeper, and after he had confessed his fault, craved the pardon of the House and the earl of Plymouth, and promised never to commit the like offence for the future, he was discharged.

On the 30th of June in the same year, the House ordered, "That for the future the right honourable the Lord Keeper of the Great Seal of England (or Lord Chancellor,) for the time, do take care, that in all commissions that are issued out of the Court of Chancery, for taking of answers of peers, these words for the future be left out, 'visis Sacrosanctis Dei Evangeliis.'"

Mr. *Robins.* My lords, I shall presume to take up very little of your lordships' time, in observing on what has passed at this solemn assembly of the two Houses of Parliament.

The occasion of it has been to examine into the conduct and behaviour of a member of your own august body, during the time he had the honour to serve his most sacred majesty in the high office of Lord Chancellor.

And the Commons have faithfully discharged their part, by omitting no one circumstance or ingredient, that could possibly serve to heighten and aggravate the crimes they have thought fit to lay to his charge.

But whether, after all, the mistakes, the inadvertencies, the example of others, and the frailties even of human nature itself, are not the whole, the sum total of all this solemn and pompous trial, will I believe with many remain for ever the question.

It would not perhaps be for the service of this noble Earl to say, that every step he took, every advance he made, for the benefit and relief of the suitors of the Court where he presided, was the best that could possibly have been invented; it will, we hope, be sufficient to say, that he sincerely thought them the best: and if better have been since found out, which have proved more effectual to the same end, it only proves him not to have been infallible, which surely is no crime.

And if the actions of his private life, his justice, his piety, his charity and his compassion for others, may be allowed to cast any light or reflection on his public conduct and behaviour, I believe, my lords, I may presume to affirm, that those who are acquainted with his innocence in the one, will never be brought to think him criminal in the other.

My lords, I am afraid many are the abuses, the corruptions and the evils which have sprung up in our courts of justice, even to the disparagement and discredit of justice itself. And complaints of this kind have been made in almost all ages, though at the same time they have been justly placed to the account of some

of the lowest and most inferior officers and ministers, which are necessarily and unavoidably made use of in the dispensation and distribution of justice.

And if an effectual method of cure could be found out for these: if those who are to give the last hand to the completion of justice were pure, the streams would then run clear and undisturbed to the end.

But, till that is done, till means are applied for the purging and clearing these channels, through which justice must be conveyed, it is no wonder that the fountains themselves look, as it were, muddy and polluted by reflection.

But, my lords, how desirable soever these ends may be, they are only the work of the legislature; a chancellor, or a judge, may sit by and lament, but they cannot help them.

They are only to be effected by that power which has a sort of omnipotence; and when they are effected, I believe none will rejoice and congratulate themselves more, than the many learned, great, and upright men, which preside in our several courts of justice.

In the mean time, my lords, as the sentence which is prayed against this noble Earl will be of little avail to stop the mischief; as it will in some sort be a punishment of the innocent, and letting the guilty escape: we are too well acquainted with your lordships' just and righteous proceedings, to be in any pain for this noble Earl.

Let selling of places, taking of presents, or any other the known and usual profits attending great preferment, be for ever abolished by a plain and explicit law; and I believe I may presume to say, that no complaints of this kind will ever be made more; that Westminster-hall will never again be named in an impeachment, and that your lordships will have no trouble of this kind for the future.

But this, my lords, I am sure I may venture to say, and I will say no more; that if it had been the fortune of this noble Earl to have lived in such happy days, his name would never have been transmitted to posterity in an impeachment.

Mr. *Strange.* My lords, we are now come to the close of the Defence, wherein, to avoid confusion, I have hitherto confined myself to the particular part which it was my duty to open; your lordships will therefore permit me to take leave of this august assembly with some few short observations both upon the Charge and the Defence.

Your lordships did for four days successively sit to hear this noble Earl arraigned, as the most corrupt, oppressive, and avaricious person upon earth: it was done too, my lords, in a manner from which I should have thought the relation he bears to your lordships would have been a sufficient protection; and without which the honourable Managers might very well have discharged their duty to the House of Commons, in laying the case before your lordships.

But, my lords, whatever resentment the treatment of one of your own body might raise in your lordships, I must for my own part confess, that I heard it all with pleasure; as it was an open acknowledgment, that all honest art and legal liberty were necessary in aggravating the Charge, and possessing your lordships with that opinion of the noble Earl, that the gentlemen of the House of Commons desire you would entertain.

My lords, the Charge in one general view, consists of an accusation against the noble Earl, either for doing what his predecessors did before him, or for not doing what it is not pretended they ever did: a singular misfortune to this noble person, that the following such great examples, should in every instance be imputed to him as a crime.

As to the accepting presents for offices, my lords, we have fully proved to your lordships, that the same was done by the predecessors of the noble Earl within the bar; and we must humbly insist, that if the statute of Edward 6, be taken as laying a restraint upon that practice, yet having put the case, and said what should be the consequence, your lordships cannot go out of that statute to punish the noble Earl.

My lords, it is the misery (I may say the slavery) under which other nations groan, that the punishment for crimes is arbitrary and variable, and that he who commits the smallest offence may be put to undergo the most rigorous punishment: but God be thanked, my lords, he hath not dealt so with this nation, but that this people hath knowledge of the law; crimes here are stated, and so, my lords, are their punishments; and give me leave, my lords, to say, that this is one of the main channels through which our ancestors have delivered down to us that liberty, which is the glory of this, and the envy of all other nations.

My lords, the act under your present consideration puts the case of accepting money for an office, and says, the consequence shall be the loss of nomination: there are no words that declare offices were not saleable by law, or that they shall not be saleable for the future, upon which to found a prosecution by indictment or impeachment; though if such words were in this act, I should still humbly insist, that as well upon an impeachment, as upon an indictment, the statute, and that only, must be the guide in ascertaining the punishment.

My lords, the Articles have bestowed many epithets upon this action; such as illegally, corruptly, extorsively, &c. But your lordships will not find them in this act of parliament.

And as to its being an offence at common law, give me leave, my lords, only to put you in mind of three provisoes in this act, which speak the contrary in the strongest terms. The first is the clause which confirms all bargains then made, and which were to take effect at a future day. The next is a declaration to what offices the act shall not extend, some whereof are of a public nature, as keeper of a forest,

manor, &c. And the third is that which takes notice, that by law the judges might dispose of offices, and therefore leaves them to the full liberty they had before the act.

And if in this impeachment we stand clear as to the selling of offices, then no acts or omissions towards raising the price (if any such had been proved) will make the Earl criminal, which is the whole of the Charge.

My lords, your lordships were told in a very moving manner, that the noble Earl was pursued hither by the united cries of widows and orphans—But we have heard none; no instance has been given of any one preference in judgment, of one penny taken during the whole course of his administering justice to these kingdoms, or of any one voluntary complaint that has been made against the Earl; and yet, my lords, he has been represented as if his crimes were full-blown, as if he had divested himself of humanity, and taken pleasure in the misery and distress of his fellow-subjects: as one, whose only motive of action was inordinate gain and wicked lucre; and as one overtaken by the Commons, triumphing in the luxury of unpunished crimes. You have been told too, my lords, that in him oppression usurped the seat of justice; and that by him the beauty of justice was deformed, and through his means justice stood afar off, and equity could not enter. How little ground, my lords, there was for these complaints, may, I think, be fairly inferred from the defect of evidence in this particular; since, after the strictest scrutiny both into his public and private life, your lordships have not had one witness appear at your bar against him.

But, my lords, since the cries of widows and orphans were so much mentioned by the honourable Managers; we, who are counsel for the noble Earl, thought it our duty to shew your lordships, that those cries were not against him as an oppressor, but to him as a reliever. And how little soever this noble Earl thought of having an account of these matters brought to your lordships' bar, yet surely, my lords, this is now a circumstance, under which it is lawful for the left hand to know what the right hand doth. And these acts of charity and generosity, which were not treasured up for your lordships' bar, but for a greater, are however proper to appear in this place, in vindication of the noble Earl against a charge of covetousness and corruption.

And now, my lords, give me leave to add, that though the private manner in which these charities were performed, has made it necessary for us to enter into a particular account, and an account that takes in some of them only; yet the noble Earl has a merit to plead, of which I am sure there is no occasion to call a witness. Your lordships all remember the time when he presided in the Queen's-bench, and saw (unmoved) the tide of preferment rolling towards a distant shore. The true interest of his country in the present royal family was then his steady pursuit, and his merit consisted in advancing it to the utmost; and his majesty, who was best able to judge of the greatness of his services, thought they deserved a reward proportioned to the most exalted merit, and therefore added him to your lordships' body.

E. of *Macclesfield*. My lords, I beg leave that I may have the liberty to lay before your lordships some observations on the several parts of the evidence given on both sides.

Your lordships will easily imagine, that a Charge of this nature must have affected me very much, and the great fatigue I have undergone hath not allowed me the liberty to consider every part so as to make the proper reflections fit to lay before your lordships.

I hope your lordships will give me a little time to recollect my thoughts, that I may speak in such a manner as is fitting to your lordships. I desire your lordships will give me leave to make my observations on Monday next.

Then the Managers and the Counsel withdrew: and the House adjourned to Monday morning next, the 17th day of May.

The Eighth Day.

Monday, May 17.

The Lords being seated in their House, the serjeant at arms made proclamation for silence, as also another proclamation, That all persons concerned were to take notice, that Thomas earl of Macclesfield now stood upon his trial, and they might come forth, in order to make good the Charge.

L. C. J. *King*. Mr. Serjeant Probyn, you may proceed.

Serj. *Probyn*. My lords, I am humbly to ask your lordships' pardon for some omissions we have made in the evidence we were instructed to lay before your lordships in behalf of the noble lord impeached the last day we had the honour to attend your lordships upon this occasion: we had some witnesses to offer more than were examined at that time, and we hope your lordships' indulgence will continue to hear them now; they are but very few, but yet such as we apprehend are extremely material to the noble lord's defence. The last evidence we laid before your lordships related to several charities given by the noble Earl, in order to shew that he was not of that avaricious temper as hath been represented in support of this prosecution; and that the constant habitual course of his life and actions, hath been directly contrary to any disposition of this kind; but we apprehend it would still have greatly added to the weight of this evidence, had it at the same time appeared to your lordships what the funds were, out of which these charities arose; that the real estate which this noble lord hath purchased, does not amount to more than 3,000*l*. a year, and that his personal estate scarce exceeds 2,000*l*. When we have shewn

this, it must satisfy your lordships, that the noble Earl hath been much more charitable than, according to his circumstances, he could afford. There is another thing I beg leave to take notice of, to obviate an objection I am apprehensive we shall hear of from the other side; and that is, that these charities were not given by the noble lord out of his own pocket, in regard there is a sum of money called box-money, which is laid out and distributed in private charities by the Chancellor every year. But to explain any suggestion of this kind, we shall shew that this box-money, though anciently used to be considerable, yet of late years it hath not amounted to more than 172*l.* a-year: and as there have been always particular objects of charity recommended to this bounty, so this money hath been applied by his lordship in the same manner it was usually applied by his predecessors; and that no part of this money ever went in any of those several charities, we have already given your lordships an account of.

Serj. *Pengelly.* My lords, we beg leave on the behalf of the Managers, to offer to your lordships' consideration, some reasons why they ought not to be permitted, at this time, to go into the evidence offered, after the indulgence of many days, and defence made on the Articles, and the evidence summed up by the counsel for the lord impeached; and a day is only given to hear the lord himself, at his own desire, to sum up or defend himself against the Charge against him; they ought not now to be allowed to enter into a new defence, or to give new evidence. It is a new method of practice, after the conclusion of the counsel upon the whole evidence, to say they have more evidence to some of the facts. My lords, I don't know any thing of that nature ever allowed, especially after the examination closed, and an adjournment for a day or two. Besides, as to that part of the new evidence which the counsel have opened, relating to the particular estate and circumstances of this Earl, how can the Managers be provided to give an answer to it? There is nothing in the Article leading thereto; they do not charge him with having a great and large estate, though that hath been formerly a proper Article in an Impeachment. But it is not made one in this case; the charge of the Commons is confined to particular sums received. If the Managers had gone into the enquiry of any other sum, at least without particular notice to him, I believe it would have been objected against by the impeached Earl. Therefore to go into this sort of evidence, where there is no charge by the Commons, is putting the Commons to answer what is not in question, which if they do, must lengthen out the trial unnecessarily. If the circumstances of his estate be material, there must then be a farther time given to contradict their proof, which possibly may be done as to his real estate: but as to his personal estate, how is it possible for any man to give an account of that? Doth not this lie in his own knowledge entirely? Nobody can open his chests or cabinets at home: so that it is impossible we should know any more of it than what serves his purposes. Therefore, my lords, we submit it, whether they shall be permitted to go into this sort of evidence? or, whether your lordships will enter into any farther examination?

Mr. *Lutwyche.* My lords, we think it is of great consequence to your lordships, when an evidence hath been so full, and with so great patience heard to every particular Article; when that evidence hath been summed up, and enforced by counsel, and every particular of the Articles animadverted upon; we think there is no precedent in any court of justice, where new witnesses have, in such a case, been permitted to be examined. Witnesses here have been produced; there hath been an interruption of two or three days for the noble lord, at his own desire, to make his observations on the evidence; to offer now to produce witnesses, that they had omitted to produce before, is perfectly new and unusual. I suppose they had these witnesses in their briefs, and, if they had thought fit, they might have called them. I know of no instance of the like in any court of justice; if the gentlemen of the other side will tell us the precedent, they may. I think it is of dangerous consequence, not only in this case, but in all other proceedings in courts of justice. If your lordships think fit to let them into one or two witnesses, I do not know why your lordships, with equal reason, may not let them go over another course of evidence.

My lords, as to the other matter about this noble lord's estate, that is not a matter insisted upon by any evidence that we have given; and I submit it, whether it is proper, or any way conducive, in this case, to any thing that is material for your lordships' judgment in this matter, for this reason, because if it was material, it is impossible for us to know the truth of it. We have no right to examine this noble lord upon interrogatories as to his estate, especially as to his personal estate; a man may in these days have the opportunity of being worth 100,000*l.* and people not know where it lies; as to his real estate, it might be known, if it was material; but we submit it, whether it is incumbent upon us to enquire, at this time of day, into the noble lord's estate? —

It is impossible, in the nature of the thing, that your lordships should have that satisfactory account, or that we should have such notice of it as is proper to make any defence of it to us material; but we submit it, that it is not material at all; and therefore we hope your lordships will keep to the rule kept in all cases in all other courts of justice, where people have made their full defence, or else there would be no end of things.

Mr. *Plumer.* My lords, we did not lay to the charge of this Earl, that he was possessed of a great estate; we have only laid to his charge what he hath unjustly possessed, we have only charged him with matters of fact, which we think we have made out; and there-

fore hope your lordships will oblige him to answer to that, and to that only, and not to go to another thing we have not charged.

Serj. *Probyn.* My lords, we apprehend it is frequently practised, that where counsel have omitted material evidence, even after summing up, the constant indulgence of the courts below lets them go into evidence to supply that omission.

We take it to be our own fault. We had in our instructions, and it is in your lordships' breast, whether we shall not supply that omission; we shall not run into a long evidence, our witnesses are but two or three.

Dr. *Sayer.* My lords, I beg leave to think, that as we point out a particular fact, distinct from any we have examined to before, there can be no apprehension of any danger at all; and if, as the gentlemen have informed your lordships, it is what is usual in courts below, that such omissions have been always permitted to be supplied, your lordships sure will act with equal equity in this case. What we undertake to prove is the circumstance of his estate; and though the gentlemen of the House of Commons did not make it a matter of charge in their Articles, yet in his Answer the noble Earl takes notice of it, and it will shew that the Earl had not his heart so intent upon gain, when it shall appear that his fortune is so much less than the world might have imagined it to be, and when at the same time we shew his generosity, and that by means thereof his estate was much lessened and checked.

I would take notice of the other matter, with regard to the evidence of the charity: it is only to explain and prevent a mistake, lest it should be imagined that these several instances of charity were out of the box-money, or fund for charity in the Court of Chancery. But, I believe, we need not trouble your lordships with this, for that the noble Earl is so well satisfied with the integrity and honour of the learned Managers of the House of Commons, that he is under no apprehension to have that turned upon him. The principal matter is relating to his estate.

As we have in great measure left it to the Earl himself to sum up the several evidences, and have done but little ourselves, the objection of the evidence being closed and summed up is not so strong as in other cases; we submit it, whether your lordships will not indulge us so far as to produce a witness or two to this matter.

Com. Serj. My lords, we do not ask this as matter of right, but as a matter of indulgence. I own the rule that the gentlemen of the House of Commons have laid down is a general rule for the government of evidence. We can't controvert that; but I believe it will not be controverted on the other side, that such a piece of indulgence was hardly ever denied, and we hope your lordships will not deny it upon this occasion.

E. of *Macc.* My lords, I don't apprehend that this is a thing so very extraordinary, or so dangerous, as hath been represented. It would be extremely severe, if, in a cause of so great length, and so much fatigue, I should have witnesses ready to give your lordships an account of some facts material for my defence; and my counsel happening not to call them, although they were attending, and there should be a certain form that should exclude me from having the benefit of their evidence; I don't know what this is founded upon, I never heard of such a form or rule.

There is no instance that where counsel hath been summing up the evidence, and, before the other side have replied, an omission hath been discovered, that that omission hath not been allowed to be supplied. And,

I appeal to my lords the judges, Whether they have ever known this piece of indulgence denied upon any trial whatsoever in the Courts below. My lords, with great submission, the evidence is not yet finished; I am sorry I must yet give your lordships the trouble of observing a good many things that have been hitherto omitted: this is a matter the counsel had directions about, the witnesses were attending, but they were omitted to be called for; I hope your lordships will not, for such a mistake, exclude me the benefit of their testimony: had it been calling fresh evidence to any matter that hath been examined to before, there might possibly be some grounds for an objection of this kind; but I mean only to call one or two witnesses to fresh matter, that hath not been enquired into before. There hath yet been no witnesses examined as to the box-money, or my real or personal estate; and yet those two things are material, and it may greatly turn to my prejudice if I have not the liberty of producing this evidence in relation to them.

It hath been represented that I have an estate vastly more considerable than in truth I have; and this matter of the box-money, as I have been informed, gave birth to a report abroad, as if what I gave for charity was out of that fund.

As to this latter, I dare trust the candour of these gentlemen, that they do not believe it; and if they do not insist that what I gave was out of the box-money, it will be needless for me to prove that it was not. But as to the other matter, I hope I shall not be precluded from having those witnesses examined, because it was before omitted; wherefore I humbly beg your lordships' directions thereupon, whether I shall be at liberty to lay their evidence before your lordships or not.

Mr. *Onslow.* I would beg leave to set your lordships right as to that of the box-money. The noble lord insinuates as if something of that had been mentioned by the Managers; nothing hath been mentioned of it, either by the evidence or by the Managers.

E. of *Macclesfield.* No, I beg leave to explain myself; I did not say the Managers had insisted upon it, but only said it is a matter that I have heard without doors; but I believe I may rely upon their candour that they will not

make it an objection now, in case they oppose my giving evidence to the contrary.

Mr. *Lutwyche.* My lords, I am a little surprised, why the noble lord mentions this of the box-money, when not one single word hath been said of it, either by the evidence or by the Managers: why then should this noble lord himself mention it? And why should he call evidence to a thing that hath no manner of relation to any thing that hath been said? If his lordship will please to give us leave to reply; if we then say any thing of it, he may then give an answer to it; but it is improper now to be giving an answer to an objection that was never made, and to which the evidence hath not said one word.

Lord Steward. If the noble lord thinks this a point to be insisted on, it is then necessary for all to withdraw.

Ordered to withdraw, which was done; and being afterwards called in again,

L. C. J. *King.* Mr. Serjeant Probyn, it is the opinion of their lordships, that the evidence offered by the earl of Macclesfield, with respect to the farther account of his charity, be not now admitted; and they are likewise further of opinion, that the earl of Macclesfield be not now permitted to give evidence of the value of his estate, either real or personal.

E. of *Macclesfield.* My lords, your lordships were pleased to indulge me to this day, to lay before your lordships what I had to say in my defence against the Charge brought against me by the Commons, and against the proof supporting that Charge, which your lordships with so much patience heard. From the time your lordships were pleased to allow me this liberty till now, I have applied myself with the utmost diligence to prepare myself for my defence.

To this end it hath been necessary to look over the notes taken of the evidence given on both sides, and likewise of what was said by those gentlemen who are Managers for the House of Commons. I find it very necessary to lay before your lordships many observations on the evidence, which depend upon an exact comparing of them together. It being a matter that hath taken up so much time, and there being such a distance between the evidence given on the one side and the other, I have been employed wholly from the last time till now in the consideration of it; and I can say, with truth, I have not slept five hours these two nights, and yet I have not been able to get through it, and I am not now prepared to lay before your lordships what I have humbly to offer for my defence; there are many things exceeding material to be submitted, and I beg, therefore, that your lordships will indulge me a farther time, so that I may be able to do it in such a manner, as may set the evidence and observations upon it in such a light as your lordships may pass a proper judgment. I don't do this out of delay; I believe your lordships will easily imagine I should be glad to have this matter over, whatsoever the event may be, for I am quite spent, and my strength and spirits wasted with the fatigue I have already undergone. My lords, I have been so far from any delay in the course of this prosecution, that when I put in my Answer, as your lordships were informed by one of the gentlemen of my counsel, though it was not finished till between three and four o'clock in the morning, yet I chose to get it ingrossed, and put in the same day, rather than there should be the least appearance of any delay on my part; and I do not know whether by endeavouring so very much to dispatch this work, I have not rendered myself unfit and unable to go on with it: human nature can hardly bear what I have gone through.

At my years, if I should undertake to do it by to-morrow, I am afraid I should sink under the weight of such a task, and not be able to come before your lordships prepared as I ought to be; therefore I hope your lordships will be pleased to allow me till the day after; the fatigue I have already undergone has been very great, and I hope your lordships will allow me such a time as you will think competent; the work I have to do will take up a great many hours; there hath been variety of evidence, I hope your lordships will indulge me till Wednesday; it is of very great moment to me, and I am sure I should be unwilling to mis-spend your lordships' time, and delay this matter unnecessarily: it really gives me the greatest uneasiness to find myself in that condition, that I cannot think of being able to do it sooner; I was before afraid that I should not be able to do it by this day, but yet resolved to do all that was possible for me, and therefore declined asking then for any longer time.

I hope your lordships will indulge me; if your lordships knew the fatigue I have undergone, and the effect it hath had upon my health, I am sure in humanity you would make no difficulty of granting me farther time to prepare myself in a proper manner, in a case that is of so great moment to me; and I hope the gentlemen of the House of Commons will not be against it; if they should overpress this matter, I don't know but the fatigue of it may bear so hard upon my life, as to save your lordships the trouble of passing any judgment upon this occasion.

Serj. *Pengelly.* My lords, we don't apprehend the lord properly applies to us in this instance.

All parties were directed to withdraw, which being done, the House adjourned till Wednesday morning ten o'clock, the 19th of May, 1725.

The Ninth Day.

Wednesday, May 19.

The Lords being seated in their House, the serjeant at arms made the two usual Proclamations as on the former days.

L. C. J. *King.* Mr. Serj. Probyn, if you please to proceed.

E. of *Macclesfield.* My lords, I am first to return my most humble thanks to your lordships for the time you have been pleased to indulge me with, for the recollecting my thoughts, and looking over the evidence that has been offered on either side, during the course of this tedious proceeding; that I might be able to put those observations I have made upon it in such a light, as became one who was to speak in a case of so great importance at your lordships' bar.

My lords, I have been under some misfortunes in this prosecution; your lordships must, no doubt, have observed the disappointments I have met with, in questions I asked of some persons, who appeared as witnesses in the course of this trial, which it was impossible I could have had any inducement to propose, but from my own knowledge of the answers that should have been returned. My counsel, through the great hurry that usually attends proceedings of this nature, happened not to be instructed in some particulars, that were extremely proper to have been laid before your lordships upon this occasion: besides that the variety of the facts continued to be given in evidence from one day to another, has in this particular case been carried on to such an unusual length, that they have not been able in the end to make themselves so perfect Masters of the evidence, as the importance of the case required.

I should trouble your lordships with an apology for my own inability to supply this at present, both from the extreme fatigue I have undergone during the whole course of this prosecution, and because that my last illness has broke my memory to a great degree. But whatever difficulties I have laboured under, when I consider your lordships are my judges, I cannot doubt but your candour and goodness will have a due regard to them, and make allowance for the want of order or accuracy in any thing I have to lay before you; and therefore, rather than ask any more time of your lordships for preparing myself, I will endeavour to go on now as well as I can.

My lords, the Charge brought against me is very heavy, as laid in the Articles, and highly exaggerated by the gentlemen that are appointed Managers by the House of Commons.

That which I think is charged as the foundation of the whole, is,

My entertaining wicked and corrupt purposes, to raise and procure to myself excessive and exorbitant gain and profit.

This it is that hath made me extorsively and illegally take money, upon the admittance of Masters, and disposal of other offices.

And the being set upon the gain arising from the Masters' places, with the desire to advance it, or keep it up, is represented to be the source of all the rest of the things complained of, which seem to me to be charged only as contrivances for that purpose.

This is such corruption of heart, and carries with it such a maligaity, that it makes every action and every omission criminal: every rash word, every neglect or imprudence, nay, things perfectly innocent in their own nature, or perhaps commendable, are so infected by it, as to deserve the severest censure and punishment.

Whether I wait in expectation of the application of the suitors, with respect to Dormer's deficiency, or of myself endeavour to get it made good, or even pay my own money towards it, it is all one, so wicked a heart corrupts all.

And the violation of my oath as Lord Chancellor, and of the great trust in me reposed, contrary to the duty of my office, is made the aggravation of almost every Article.

I shall endeavour to shew your lordships, that the several things charged upon me are either not true, or not criminal; or if your lordships shall judge otherwise of them than I do, yet that they were the effects, not of wickedness, but of mistake; and if I have ever done any thing for the service of my country, of the constitution, of his majesty, and of the royal family, and the present establishment, and for the administration of public justice, it might not be unsuitable to the unparalleled goodness of this reign, for your lordships to have compassion upon the errors, mistakes, and weaknesses of the faithful, steady servant of a prince, whose mercy has been so often extended, in so great a degree, to the highest crimes of his bitter enemies.

Before I enter upon my particular defence, I beg leave to take notice of something that has been said with relation to the Answer which I have put in to these Articles of Impeachment, as containing a plea of a pardon at the same time that I insist upon my innocence; and its not being a full Answer to all the particular charges in the Articles. As to the first, my insisting on his majesty's most gracious, general, and free pardon for all things before the 24th of July, 1721,

My lords, I hope, and am myself of opinion, that I have not done any thing that is criminal, or needs a pardon;

But when so many gentlemen of learning and great parts, undertake to make out, that that is a crime which I thought and still think not so; should I opiniate to that degree, and be so confident that your lordships will be of my opinion, as to refuse the benefit of a pardon, which his majesty has so graciously granted to all his subjects?

When little imprudences, and so many omissions, and even idle words, loose talk, and unguarded expressions, are laid to my charge as crimes, and made the subject-matter of an impeachment, and some of them charged without mention of any time, or the name of the cause in which it is pretended they were spoke, or any other circumstances by which I might be enabled, either myself to recollect or to make enquiry of others, in order to pre-

pare for my defence, it had been folly in me not to have taken advantage of the pardon.

And as for the reflexion intended, to expose the absurdity of pleading innocence and a pardon to the same offence; what is more consistent than to say, I ought not to be punished, because the fact charged is no offence, or if it be one it is pardoned? But had the gentleman who made it, been pleased to have read the last Act of Grace carefully through, he would have found that it expressly provides, that the pardon shall support the plea of innocence, and upon Not Guilty pleaded, the act may be given in evidence to prove the person not guilty. And, in the notion of our law, it wipes away whatever guilt there was, and leaves the person innocent, that is, as a very great lawyer and a very wise man expresses it, it takes away not only *pœnam* but *reum actum*, the guilt as well as the punishment.

As to the reflexion made upon my Answer in another respect, as if it were not full and direct, and that in Chancery, the Court where I had presided, it would be held an insufficient answer: probably it might be so; but that is, because that a plaintiff there has a right to require a discovery of all such facts as are material for his advantage, upon the oath of the defendant. And therefore the answer is not only the party's own defence, but it is to supply the plaintiff with evidence, who therefore may except to it as insufficient, so far as it is short of answering to, and giving an account of all, of every minute circumstance that he charges.

But do they imagine that to be the case in a criminal prosecution? Or that the defendant there is obliged to furnish evidence, or to confess any thing that may tend to affect or charge himself? No, my lords; the answer there is only for the defence of the person accused: and Not Guilty is a full answer.

And, my lords, I insist upon it, I have given a full answer to all the Articles at the end of my Answer, where I have pleaded the general issue, and in express words said, That "I am not guilty of all or any the matters contained in the Articles, or any of them, in manner and form as they are therein charged against me;" which is of itself a direct and full answer, without more.

And though I have set forth other facts, it is only where I have thought some things might be farther explained. But there is no need to make any proof of a word in my Answer, if the charge in the Articles is not supported by the evidence given against me.

And I still hope your lordships will be of opinion, that though some of the matters mentioned in the Articles are proved, and indeed some are expressly admitted by me, and others never disputed; yet that none of them is admitted or proved in such manner as it is charged in the Articles.

Having said thus much, I proceed to consider what has been offered in proof against me.

My lords, the preamble of the Articles is intended for an aggravation of my crimes, by shewing what oath I had taken, which I had violated; and what favours I had received from his majesty, and was not satisfied with them.

As to the last, give me leave to say, that I can never express the sense of my heart for his majesty's favours and bounties, and that it ought to be a high aggravation, if I have abused them.

I pretend to no merit, but that of a heart full of duty and zeal for his service; but his royal grace and goodness has exceeded, not only my poor services, but even my desires and wishes.

And whatever becomes of me, in whatever state of life I am, my gratitude and duty shall never abate.

As to the violation of my oath, no such crime is made out against me.

The oath of office taken by the Chancellor when he enters upon that office, has no relation to what is laid to my charge: I have set it forth *verbatim* in my Answer, and no argument has been attempted to be drawn from it.

But it was said the other day, that I had taken an oath upon the statute of the 12th of Richard 2, which I had forgot, both in my Answer and in my conduct.

As to my Answer, I beg leave to observe, that the Answer is suited to the Charge. I am not charged in the Articles to have ever taken any oath upon that statute, nor is the oath supposed to be taken on the 3rd of November at all mentioned.

The words of the preamble, which is the only part of the Articles that mentions my taking any oath, are these:

"And whereas Thomas earl of Macclesfield, in or about the month of May, in the year of our Lord 1718, by the grace and favour of his most excellent majesty, was constituted and appointed Lord Chancellor of Great Britain, and did thereupon take the usual oath for the due execution of that high office, whereby he did swear well and truly to serve our sovereign lord the king and his people, poor and rich, after the laws and usages of the realm, and such other oaths as have been accustomed; and the said Earl continued in this great office," &c.

Where the other oaths accustomed, as well as that particularly described, are confined to what I did thereupon take, that is, upon my being made Chancellor in May 1718; at least to my poor understanding it appeared so. Nor did I at all imagine, that it referred to what was done the third of November after, which was but the same as had been done the 3d of November before.

And accordingly my Answer is confined to the same time that I was sworn Lord Chancellor before his majesty in council, the 14th of May 1718, when I took the oath of office set forth in the Answer; and at the same time took the oath of allegiance and supremacy. And there is no pretence that I took any oath upon the statute of Richard 2, at that time.

The words of the Answer are,

"That in the beginning of May, in the year 1718, he the said Earl was, by his majesty's great grace and favour, appointed Lord Chancellor of Great Britain, and was sworn before his majesty in council the 14th day of that month; when the following oath, being the usual oath of Lord Chancellor, was administered to him, viz. You shall swear, &c. And the said Earl, at the same time, took the oath of allegiance and supremacy, but no oath of office besides that above set forth."

My Answer therefore plainly relates to what was charged, and my taking no notice of any oath upon this statute, ought not to be imputed to forgetfulness, but to its not being charged. It is not charged, and therefore not answered to.

But it is now insisted upon, and great stress laid upon it, that at the naming of sheriffs, which is done in the Exchequer upon the 3rd of November every year, I took an oath upon the statute of 12 Richard 2, which extends to the disposal of the office of Masters in Chancery.

To judge of the truth of this new Charge, your lordships will be pleased to consider what it is that is yearly done the 3rd of November, upon that occasion of naming of sheriffs.

The Managers were not pleased to open what passes every year upon the nomination of sheriffs, which had been proper before they called the witness to prove it; if they had, it might have saved me the trouble of asking any questions.

But the examination, and the testimony of a witness that spoke indistinctly and low, tended, as I thought, to have the statute entered in the old book of the Exchequer in obsolete French, and so ill read as hardly to be understood, to pass for the form of an oath then administered upon the statute which had been just before read in English to your lordships at the table; and so it might be taken to be an oath conceived in the words of the statute, extending to all nominations of officers, and to all times, and not confined to that occasion.

I did therefore ask some questions, not to quibble away an oath, as one of the Managers was pleased to express it, but to have the matter laid before your lordships in its true light, and which came out to be thus:

The lords of the privy-council and the judges, being assembled for naming sheriffs for the following year, at the time and place appointed for that purpose, the act of parliament of 12 Richard 2, is read, directing several persons to be sworn, concerning their naming of sheriffs, and of some other officers specified in the act, and with general words extending to more; then an officer gives a Bible to every one of the privy-counsellors and judges present, who all, one after another, kiss it; but nothing is said to them by the officer or any one else, nor are any words spoken by them.

I know it has been much doubted how this could be called swearing, or taking an oath.

But that is not at all what I insist upon.

There being something sacred in the ceremony, I agree the action should be considered as a solemn undertaking in nature of an oath, to observe that statute in the business we were then entering upon; and so it is an engagement to proceed then to name sheriffs according to the direction in that statute.

And accordingly this is repeated every year upon the like occasion, though the persons are the same, and has been so by me for seven years together, before I was Chancellor, and for as many since.

But to extend this farther than that occasion, is, I humbly insist upon it, going beyond what the action then done imports.

The statute plainly relates to nominations or elections, where numbers of persons are called together to name officers; the very reading the statute shews it, and when I come to speak of the construction of that act of parliament, it will be yet more plain,

And when it provides, "That the chancellor, treasurer, keeper of the privy-seal, steward of the king's house, chamberlain of the king, clerk of the rolls, justices of the one bench and of the other, barons of the exchequer, and all others, who shall be called to ordain, name, or make justices of the peace, sheriffs, escheators, customers, comptrollers, or any other officer or minister of the king, shall be firmly sworn, &c." I take it to mean that they shall be sworn when they are so called together, and met. And the practice is accordingly.

There are some old statutes that say, that the Chancellor with the council shall appoint justices of the peace, the treasurer with some others shall name customers, &c. But the usage at this time is, (and it has been so for some hundreds of years) that the naming of justices of the peace, is in fact in the Chancellor only; of customers and comptrollers, in the treasurer; and many of the persons named in the statute meddle not with naming any of the officers comprised within either of the particular or general words.

If therefore, my lords the bishops were desired to draw up a form of an oath to be taken upon this statute by all the persons attending on the 3rd of November for the naming of sheriffs, I presume they would confine the oath to the particular occasion.

I submit to their consideration, whether they would draw it up so, that every one present should swear that he would observe this statute, or not go contrary to this statute, in the nomination of officers which he has not any right or power to name, nor is ever called to name: whether they would frame such an oath, whereby the judges should swear that they would not name justices of the peace, escheators, customers, or comptrollers, for gift or brocage, favour or affection, when they cannot name them at all, either by provision of law or by usage?

I apprehend this would be an improper, if not a vain oath.

And a constructive taking of an oath, which is all that can be insisted upon here, ought not to be carried farther than would be proper to express in words at length.

And therefore, as all the persons assisting there certainly take the same oath, and many of them have nothing to do with the choice, or naming of any of the other officers in the act besides sheriffs; and as this action yearly repeated on this particular occasion, shews it to be intended to relate only to sheriffs; I have always thought that it went no farther than to oblige me; that in the affair, which we were then entering upon, I should act according to that statute.

And I am persuaded, that, in this case, I have the universal concurrence of the judgments of others. For I do not believe that ever any person that assisted on that occasion, had the least apprehension of his then taking an oath, which related to any thing but that particular occasion.

But if they all did take an oath so extensive as to reach to the disposal of all other employments, (which is the sense wherein I believe the Managers would have the words of the act to be understood,) God knows in what guilt many of them have involved themselves.

It is a part of the statute, and part of that to which the persons called to name officers are directed to be sworn, "That none who sues by himself, or by any other, in private or openly, to be in any manner of office, shall be put into the same office, or any other."

Will these gentlemen urge that every lord treasurer, lord commissioner of the treasury, or other lords in great employments, that give places, ouname persons for places to the king, and have once attended at the naming of sheriffs, have been guilty of a violation of this oath, in every instance, where they have named any person to any office, who, by himself, or his friends, ever ask for the place given, or any other?

I cannot imagine that they will attempt to carry it so far. But if they do, I will yet presume, that your lordships will not, by such a new construction, condemn so many persons that are innocent, or thought themselves so.

Hence I think myself not to have taken any oath upon the statute of 12 Rich. 2, which any way extends to Masters in Chancery; and I hope your lordships will think so too.

What is the particular meaning of this act, and what arguments may be drawn from the provision therein, I shall not trouble your lordships with at present, but shall reserve the consideration of it for another place: but as to the charge of violating an oath founded upon it, let the observations I have made, from the frame of the act and the nature of the action, at present suffice.

The subject matter of the first Articles, as they stand in order, and which I believe has given rise to this prosecution, is the taking money for the places of Masters in Chancery; long practised without blame, though made my great crime.

What has been urged from the nature of the office, the oath which the Masters take, and the commissions granted to them, together with the Master of the Rolls and the judges to hear causes in the absence of the Chancellor, will not have any weight in the question, whether it be criminal to take money on admitting them.

I beg leave to say, that the office anciently was quite different from what it is now, so that it is in a manner forgot what it originally was. One branch of their office anciently, and then reckoned of importance, was the framing writs, which are now made out by the cursitors; and that which is their greatest business now, there appear no footsteps of being done by them, or any others anciently.

Their business now is chiefly preparatory to the determination of the Court of Chancery, upon references made to them by the Court, in order to their stating things to the satisfaction of the parties; or reducing the dispute to some few heads, in which they differ, for the easier determination of the Court.

And that which they are most generally employed in thus, is matter of accompts.

Very frequently the parties, after having had the items examined and proved, agree before the Master to the whole accompt, and almost always the greatest part of it. And if the parties are dissatisfied, they are at liberty, by objections in writing, which are called exceptions, to state to the Court the distinct items which they dispute, by which means the Court is eased of the consideration of all the rest of the items of the accompt. And the Master makes no judicial determination; but when he makes his report, has only done the drudgery of an accomptant, compared vouchers, heard objections, convinced the parties as far as he could, and then stated the whole accompt so as he thinks is right; which at last has its force, not from him, but from the Court, which confirms it if not disputed, or examines the disputed points if desired.

Upon references to them whether answers are sufficient, they are to compare the words of the answer with the words of the bill, and state whether they find them full: and if the parties do not acquiesce in the Master's opinion, the Court takes the trouble to make the comparison.

They are likewise cashiers, not of the Court but of the suitors, and always at their prayer.

And the parties have this advantage in having the Masters for their cashiers, that they have a ready method to compel payment by order of the Court, and a commitment of the person or sequestration, (that is seizing all their estates and effects,) or both, upon such order, in a short and cheap way; whereas against other cashiers they must be put to the charge and delay of a tedious suit, if the money be not paid.

And other officers, whose places are allowed to be sold, do the same things, make reports to state facts on references, are cashiers of the

money brought in, and tax costs, which is another thing the Masters do.

As to the oath; it is the old oath, before the office was so greatly changed; what advice to be given to the king it refers to, will be hard, I believe, to explain, and has not been attempted; but if the writs requiring their attendance here were looked into, possibly it may be thought, that anciently they attended your lordships in a manner different from what they now do, and have done from before the time of our memory.

And as to the commission to hear causes in absence of the Chancellor, that makes no more variation in the nature of their office, than it doth in the office of clerk of assize, (expressly allowed in the statute of Edward 6, to be disposed for money) that the clerk of assize is constantly joined with the judges in the commissions of Oyer and Terminer and gaol delivery, for the trial of criminals, even for capital crimes.

To proceed therefore to the points of the Charge.

It is founded singly, upon the taking money for admitting the Masters into the office; and the manner of taking it extorsively, without reference to any want of qualification in the party admitted; and therefore cannot be maintained, unless the taking of money be in all such cases criminal, or that the manner of taking or extorting it in these cases make it so.

Therefore I will first speak to the general question, whether taking money upon occasion of putting in a Master, is in all cases criminal in itself, or by the common law, or made so by any statute which subjects it to any judgment or punishment, which can be prayed in this prosecution; as I have expressed in my Answer.

And that which I humbly insist upon as to the first, that is, whether it can be said to be wicked or criminal in itself, or from the reason and nature of the thing, is this:

An office may be considered in two respects: first, with respect to the duty; that is, the concern of the public, that the person be duly qualified to discharge his office well. Secondly, with respect to the profit and advantage; and that is merely private, and concerns the officer only. And whilst he discharges his duty well, without extortion, or other misbehaviour, the public is little concerned in it, whether the profit be more or less. As in those cases, which are very numerous and of great consequence, that may be executed by deputy; provided the deputy behave himself well, the public has never concerned itself what his salary or allowance from his principal is, whether it be greater or less.

And as the person who is put into a very beneficial office, such as one of these, for his life, has not any antecedent right to the office, and therefore not to the profits arising thereby; and he that prefers him is not bound to give it him; therefore when he puts him into it, he in effect grants him all the profits of the office for his life: and if the officer make him a present for it, either unexpected, by way of thanks after he is put in, or expected, which he had told him of before, or give it at the time, or before that he is admitted; I see not any immorality either in the giver or taker. It is money given for profits to be received during life.

The public is concerned only in the goodness of the officer, not how advantageous to him the grant of the office is, nor in the inducement which he that appointed him had to put him in; whether friendship, acquaintance, relation, importunity, great recommendation, or a present.

I agree that a person taking a present, and putting in an unfit person, when he knew him to be so, or had just ground to believe him so, is criminal. Not because he has taken a present, but because he has prejudiced the public knowingly: It may be an aggravation that he had taken money; but the crime is, the wrong done to the public in the person advanced. It had been the same crime, had he done it for the sake of kindred, or friendship, or for recommendation, or any other reason.

But if a person very well qualified be placed in an office, and the public has all the advantage from him that it can have from an officer in that post, and so I, who placed him, have well discharged my duty to the public; is it material how well I loved him, how nearly he is related, who it was that persuaded me to prefer him, or what he gave me on that account, whether before or after he was put in? Will any of these circumstances make me criminal in an action by which I served the public well? If the public have all the benefit it can have, where is the immorality? where is the crime, if I have an advantage too; especially if usage has in some sort annexed that advantage to my office, which is taken from his?

I know it may be objected with great appearance of reason, that this practice is dangerous, it leads to inconveniences, it is a temptation to him that disposes of places to make ill officers, and a temptation to the officers to extort money and abuse the subjects, in order to get up their money again.

But is it therefore a crime, where the temptation is resisted, and a very good officer is put in, and he behaves himself perfectly well?

The point of the Charge now under consideration rests singly on this, That I took money for admitting Mr. Francis Elde (for instance); and though taking money is a dangerous practice, and may be a temptation to let in an ill man, is it therefore a crime to put in Francis Elde, who is not alleged to be an ill man, or any way unfit, and is really an excellent Master?

This argument concludes, only that allowing it to be generally practised is inconvenient, and may in the deliberations of the legislature be properly used to prove it fit to be restrained by a law: But is not of force, in a court of jus-

tice, to prove it to be a crime in every instance, because it may occasion a crime in some.

Farther, as to the matter of temptation to put in one unfit:

The liberty of preferring relations to offices is a temptation to put in persons unfit; and, without doubt, has often prevailed. Supposing therefore it might be proper matter of deliberation in the legislature, how far a restraint should be put upon it; yet, in the mean time, is advancing a relation to an office, which he is fit for, a crime, because, in other instances, it has occastoned a crime, or may do so, or is a temptation to it? And would it be a sufficient charge of a high crime against me, to say that I illegally and corruptly put into such an office *A. B.* my son or my brother? I apprehend not.

Till a restraint is laid, the thing may be innocently done.

If a restraint be laid, the law will operate upon it so far as the restraint extends; but farther than that, and the consequences declared to ensue thereupon, it will remain as before.

Considering this therefore in itself, and upon the reason of the thing, where is the force of the argument? You took 5,000*l.* for putting in Mr. Elde or Mr. Thurston, a very fit person, and an excellent Master, and therefore you are criminal, because somebody else at another time may put in another Master not fit, upon his giving a present.

If this then be not criminal in itself, how do they prove it to be so by the common law?

The only case they have instanced as any authority for that purpose, is that of Stockwith and North in Moor's Reports.

But here give me leave to say, that it was proper and just for the learned Managers to produce, in making out their Charge, all their arguments on this head of the illegality of this practice, that there might be a proper opportunity of weighing them, and giving them a satisfactory answer (if it could be done) at this time of my defence, and I presume they have done so. But if they should think fit to reserve any fresh argument for their reply, which we shall apprehend may want an answer, your lordships will, in that case, give me leave to insist upon a right of taking proper notice of it afterwards, and not let them reap any benefit by lying by, in such an unprecedented manner, and expecting your lordships' judgment, without hearing the other side upon it.

The only case, I say, which they have instanced in, is the case of Stockwith and North in Moor's Reports, 781. I have looked upon the case as it is in that book, and it appears to be thus:

"North was fined in the Star-chamber, for that he, being sheriff of Nottingham in the 43d year of queen Elizabeth, took money for the gaolership and bailiwick for that year; he gave them first to his servants, who sold them, but he himself received the money. And this was adjudged to be letting to farm of his county, contrary to the statute of 4 Hen. 4, cap. 5. Yet there note that the statute itself gives a penalty certain and pecuniary, and is *malum prohibitum, non in se.* But the Court took it that in as much as corruption follows upon the covetousness of officers, and they are forced thereto by the prices which they give for things which ought not to be sold; that this putting to farm and selling of offices, is *malum in se*, and finable."

It appears here, that this was a prosecution upon the statute of 4 Hen. 4, for the point adjudged was, that this was contrary to that statute, and therefore whether what was done, was against the common law, or *malum in se*, or not, was not at all in judgment before the Court.

And the mention of that is introduced as spoke to remove a doubt, how North came to be fined, when a particular penalty is (as it is there said) given by the act of parliament.

But that is a gross mistake in the reporter; the act of parliament is very short, I desire it may be read.

It was read as follows:

"Stat. 4 Hen. 4, cap. 5. Every sheriff shall abide in proper person in his bailiwick for the time that he shall be such officer, and that he shall not let the bailiwick to farm to any man for the time he occupieth such office; and that the said sheriff be sworn from time to time to do the same in especial, amongst other articles comprized in the oath of sheriff."

Your lordships observe, that there is in this act only a prohibitory clause against the disposal of such bailiwick, but no pecuniary or other particular penalty of any kind inflicted by that statute: so that it could not be a question whether a fine was proper, as that reporter supposes.

The exactness of the report, therefore, is not to be relied upon, and what other mistakes may be in it, I know not. Indeed it is a posthumous work, uncorrect notes taken for his own use, and not intended to be published.

But however, taking it for truth, that some of the judges did speak to the effect in that report: it is a common observation, that when judges are proceeding in the case of a plain and express law, words used by them that tend to discountenance and farther expose the crime then censured, are of no great authority.

The very same thing is done in lord chief justice Coke's 12th Report, with respect to turning arable land into pasture; against which there was then an act of parliament in being; and farther to discountenance it, it is there said to be *malum in se.*

And in many places, usury is said to be *malum in se*, and with greater colour; and yet I believe a prosecution for it would scarce be thought maintainable, farther than the act of parliament will justify it.

But as to this particular matter of a sheriff letting this bailiwick to farm, before it was especially restrained by acts of parliament for that purpose, there are many footsteps of its being an ancient and allowed practice.

The stat. De attinctis, Rast. Sheriffs 5, containing several provisions about sheriffs, directs, that "that statute shall extend as well to those which were sheriffs and other ministers, that let to lease their bailiwicks, as to sheriffs and other ministers which hold their bailiwicks themselves."

Where the sheriffs holding their bailiwicks themselves, or letting them to lease, which is letting them to farm, is spoken of as perfectly indifferent.

Nor is the expression supposed to be used in Moor, pretended to be built on any precedent, authority or fact, but is barely the reasoning of whoever he was that used it, from the temptation to which officers that pay money are exposed; and how just it is, I submit upon what I have laid before your lordships on that subject. Though the danger from that temptation is much greater in the case of bailiffs and sheriffs, that have only ignorant people to deal with in remote parts in the country, where it is difficult and chargeable to obtain redress, than in the case of Masters in Chancery, that act under the view almost of a court of justice, and where persons wronged have an easy opportunity every day to obtain redress.

So that this loose expression mentioned by Moor, (coupled too with a gross mistake) not at all to the point of judgment, is of very little force to prove the case to which it is applied to be against the common law, and of less to prove the present case to be so.

What then is farther offered? Do they shew, that by the common custom of England, which is properly the common law of England, the taking money for offices has been from time to time, punished, or condemned as criminal?

No; it is admitted on the one hand, that there is not one instance of its having been punished or condemned as criminal, at the common law:

And on the other hand, it is notorious, that in fact the greatest offices have anciently been sold even by the kings; and that not in a clandestine manner, but so that the price, and what it was paid for, have been entered upon record.

The instances have some of them been mentioned.

Richard, the son of Alured, in the 5th of king Stephen, was to pay 15 marks, that he might sit with Ralph Basset for the pleas of the king, which Ralph Basset was then justicier.

And Walter de Grey, in the 7th of king John, gave the king 5,000 marks to have the king's Chancery for his life, and the bishop of Norwich engages for the payment.

I have the copies of both the records here in my hand, if there be any doubt of them.

Nor are our histories quite silent. In Hollinshead, in the 5th year of Richard 1, (who was of the intermediate kings between the two kings I have named) it appears what was done, almost with the sanction of parliament, certainly with their notice, and not with their dislike.

"The king (says the historian) called a parliament at Nottingham, and the first day of their session Gerard de Camville was discharged of the office of the sheriff of Lincoln, and dispossessed both of the castle and county. And so was likewise Hugh Bardolf of the county and castle of York, and of the castle of Scarborough, and of the custody and keeping of the county of Westmoreland. The which offices (as he goes on) being now in the king's hands, he set them on sale to him which would give most. Hereof it came to pass, that where the Lord Chancellor offered to give 1,500 marks beforehand for the counties of York, Lincoln and Northampton, and 100 marks of increase of rent for every of the same counties; Geffery archbishop of York offered to the king 3,000 marks aforehand only for the county of York, and 1,000 marks yearly of increase, and so had the same committed to his regiment."

And in the case of Magdalen College, in the 15th of king James 1, reported in 1 Rolls's Reports 157, sir Henry Hobart then Attorney General, and soon after lord chief justice of the Common Pleas, argues from it, as a principle not to be contested, that if any one procure an office to himself for 1,000*l.* of the gift of the king, the office is not lost by the statute of 5 and 6 Ed. 6, which shews they think not wicked, not *malum in se*, or against the common law, for the prerogative cannot extend to what is so.

My lords;—Whoever makes the grant, or receives the money, the king or a subject, the temptation under which the officer who paid it lies, to reimburse himself, is the same.

And if the strength of that temptation make the thing criminal, it will make it so in all instances.

It has been taken notice of by those gentlemen who are of counsel for me, that the provisoes in the very statute of 5 and 6 Ed. 6, prove, that this is not against the common law, or criminal in itself, at the same time that it puts a particular restraint upon the practice of buying and selling offices, or deputations to offices.

Give me leave to add some observations upon the provisoes in that statute.

Sect. 4, contains a proviso, that this act shall not extend to any office whereof any person is seized of any estate of inheritance.

Suppose a man that has an office of inheritance, takes money from a person whom he appoints as his deputy:

Is not that deputy as liable to be tempted to reimburse himself by extortion or corruption, as if his principal had but an estate for life?

Can a deputy's behaviour turn upon the title of his principal? So that 1,000*l.* (for instance) paid by him, will certainly make him corrupt, if his principal holds his office for life; but will not make him guilty of the least misbehaviour, if his principal have the inheritance of the office?

This proviso is therefore plainly founded only upon the regard the law-makers had to the property and interest of such owners of an office, which they would not prejudice, and there-

fore he is left at full liberty to sell the office itself, or a deputation to it.

But if to take money from a person who is to have or execute an office, were unlawful by the common law, or wicked in itself; it is impossible that the owner of the office could have a right to that wicked and unlawful gain; nor could the law-makers have any regard to it.

And since here they are careful not to take it from him, they allow it. They in effect make a formal declaration that it is lawful, and that the provision made by that act is not so necessary, as that it should in any degree interfere with his private property in that instance.

Farther,

Sect. 3, makes void all agreements, bonds and promises for money, for any office or deputation. But sect. 6 provides, that the act shall not extend to agreements, bonds, &c. made or concluded before the first of March then next.

This supposes it the practice at that time, not only to give and take money for offices, but to make formal contracts for that purpose, which the courts of justice were to compel the performance of.

Does it condemn them as criminal in themselves, by reason of the danger?

No, on the contrary it does not esteem the danger so great, as that, to avoid it, the property arising upon these contracts should be taken away, or at all impeached: but leaves a remedy in a court of justice to enforce the performance of a contract, which must necessarily cause a public mischief, if that were true that it is unlawful in itself, and that its unlawfulness arises from the mischiefs consequent upon paying money on that occasion.

Had the makers of that law been of the opinion which these gentlemen seem to be of, and thought such traffic a wickedness, it had been impossible for them not to have put a stop to it, and absolutely disannulled all securities and cautions for the performance.

I do not suppose the form of expression used in this proviso will be criticised upon, or that it will be urged that the words of this proviso only import, that those bonds are left in such force as they would have been, if the act had not been made, and does not make them good.

That would be a poor subterfuge. The proviso makes them not good, it is true. Why? Because it plainly supposed them to be good before; but that sect. 3 would make them void, if this proviso did not prevent it; and this proviso is on purpose to prevent it, and for nothing else.

And would the makers of a law, would these gentlemen in making a law, insert a proviso that agreements should continue of such force as they were before, if they thought them of no force before? Nay, if they thought them not only void, but mischievous?

The saving a right of action upon such bonds, and making a proviso in favour of them, gives them such countenance, that those that had any such would certainly insist upon them, and the persons that were bound would be discouraged from disputing with them of what the legislature did not think fit to deprive them of, and would therefore pay without standing a suit.

There is yet one proviso more in this act, material to the present purpose.

Sect. 7 provides, that this act shall not extend or be prejudicial to the lords chief justices or judges of assize, "but that they may do in every behalf touching any office to be given or granted by them, as they might have before the making of this act; any thing above-mentioned to the contrary thereof in any wise notwithstanding."

This plainly implies, that at that time, and before, it was the practice for the two chief justices and judges of assize to take money for the offices in their courts, else nothing in this act could extend to what they usually did, or be of any prejudice to them.

And it shews too, that the law-makers did not dislike the practice.

I beg leave to submit to your lordships, whether this doth not amount to a declaration of the law, that the taking money for offices, whatever danger there may be from it in some cases, does not necessarily, in all cases, cause bad officers to be made; nor the paying it make the officer extort: for the nature of things changes not with the titles of persons. An officer that pays money to a lord chief justice, will be under the same temptation to get it up again, as he that pays to a lord chancellor.

As to the wording and form of expression of this proviso, I take it to be very clear, that the words "as they might have done before the making of this act," are declaratory; that they might before the making of this act take money for offices; and because in the case of those officers the danger was not so great, it is still saved and preserved to them.

If it be said that nothing is saved to them, but they doing what they might have done before, and that they could not before lawfully take money for offices; I beg leave to answer, that if that be so, the clause is perfectly frivolous. A strong prejudice against the exposition that makes it so in all cases, but much more so here.

For as the judges are always attendants in this House, and this clause greatly concerns them; it is highly probable that it was drawn up and proposed by themselves.

And if taking money for offices were then esteemed criminal; if the notion is right which is now contended for, that taking money for offices was against law, was corruption; and that this law was then passing to lay farther particular restraints upon it; is it possible that the judges could presume to ask not to have a difficulty or discouragement laid upon their being guilty of corruption, or their doing a thing unlawful?

Or, is it possible that the Lords and Commons should consent to it?

Or, if the judges would ask it, would they not have made it effectual? Would they, by proposing the proviso, in effect, own a corrupt practice, and their resolution to continue it, ask provision for it, and be indulged; and yet not ask what would effectually justify them in it?

I hope, therefore, that what is charged against me is not condemned by the common law or usage of this kingdom. If it be, it properly lay on them to make it out; but they have shewn nothing to prove it; not one instance of its being punished at common law, or blamed; not one citation out of the old books of the common law, precedent to the acts of parliament made relating to things of that kind. On the contrary, I have shewn it practised in the highest instances, without blame or censure: and that several clauses in the statute of Ed. 6, were plainly founded upon a supposition of this practice being allowed by the common law, and continue the allowance of it, in some instances, to this day.

This is what I had humbly to lay before your lordships, with respect to the common law, And I shall now consider it as it stands upon the acts of parliament.

And as to acts of parliament relating to this matter, they have suggested only two, the statute 12 Ric. 2, cap. 2, and the statute 5 and 6 Ed. 6, cap. 16.

As to the statute 12 Rich. 2. The provision of this statute is to bind those who make or name officers in the cases to which it extends, under an oath to observe the directions of that statute in their so doing. And I hope I have already fully answered the pretence of my having taken an oath upon this statute, which extends to any of the officers in the Court of Chancery. I shall now consider of that statute, and what may be urged from it, a little more particularly. And,

1. As I have already mentioned, I take the statute of 12 Rich. 2, to relate only to such nominations as are in nature of elections; that is, such where the nomination is in several persons.

In those cases it is common with us to have such oaths administered, but not in others. We find them in colleges, and other bodies of men.

The great use and main intent of such an oath in those cases is, to prevent combinations, strife, and brigues, where the several persons concerned will naturally have several views. And the animosities and contentions arising thence among so great officers as this statute takes care of, might greatly affect the public peace.

The things which cause most contentions on such occasions, are money, affection, (by reason of kindred or friendship) and great solicitations.

Accordingly, this act extends to all three, and takes care to forbid the last (solicitation) wholly; and the being influenced by either of the former.

The persons called to name, or make justices of the peace, sheriffs, or any other officer or minister of the king, are to be sworn, "that they neither name nor make them for any manner of gift or brocage, favour or affection; nor any that pursues by himself or any other, privately or openly to be in any manner of office, be put in that same office, or any other; but that they make all such officers and ministers of the most good and lawful, and the most sufficient to their knowledge and their conscience."

My lords, in the next place,

2. The words of the statute plainly import as much; that the nomination there meant, is what is made by several persons when they are called together.

"It is accorded and assented, that the chancellor, treasurer, keeper of the privy seal, steward of the king's house, chamberlain of the king, clerk of the rolls, justices of the one bench and of the other, barons of the Exchequer, and all others who shall be called to name or make justices of the peace, sheriffs, escheators, customers, comptrollers, or any other officer or minister of the king, shall be firmly sworn that they neither name nor make justices of peace, sheriff, escheator, customer, comptroller, or any other minister of the king, &c. for gift or brokage, favour or affection," &c.

I own, that there seems some difficulty as to this, because I do not know of any law, at that time, that any of these officers, except sheriffs, were named by an assembly of several persons.

But though there were no law requiring it, there might be an usage to do it, by some direction from the crown for better information.

And what is now done in relation to sheriffs, turns in some part upon such usage continued down to this time, without any law, that I could ever hear of, to support it, as to all the persons who now meet to name them.

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And by like usage, which we cannot now account for, there was probably some such practice with respect to other offices.

For it is to make the statute absurd, which provides that such and such, and all others that shall be called to name justices of the peace, sheriffs, escheators, &c. shall be sworn to name these officers without favour or affection, if neither they nor any others were called to name any of these officers.

3. This is the stronger, because constant practice, the best expositor, has thus expounded this statute.

If the intention of this statute were, that all the particulars first named, that is, chancellor, treasurer, keeper of the privy seal, steward of the king's house, chamberlain of the king, &c. were to be separately sworn, as to the respective officers under each of them severally;

Then this must have been made part of their oath of office, or administered at the same time with it, though in a distinct oath.

But that has never been done, nor has it ever been administered to a single person at that or any other time. Which is the strongest argument possible that it is not what was then meant, or ever understood to be meant, by that statute. But on the contrary, in the single instance where several are called together to name officers, that is in the case of sheriffs, the swearing of them, to observe this statute on that occasion is never omitted to this day.

Give me leave to observe one thing more, that a chancellor, a treasurer may possibly be seven years in his office; I believe treasurers have in fact been all or the greatest part of their time without ever taking this oath, which is never taken, unless they happen to assist at the naming of sheriffs, which there is no law requiring the other great officers to attend at, and which is now become little more than a matter of form, the list settled in that assembly being every year departed from in many counties.

And if this that I have thus offered be the whole meaning of the statute, then at this day, as the usage now is, it has nothing to operate upon but the nomination of sheriffs, and therefore extends to no other cases, and consequently not to any of the officers in the Court of Chancery.

But may it not be said, that though the oath required by this statute extend not to the present case, yet will not this provision amount to a declaration of the sense of the law-makers, that the things thus provided against are such as should not be done, and consequently that the doing of them after such statute will be against law?

To state this distinctly, would take up more time than is proper upon this occasion.

But this I beg leave to say, and it will be as well applicable to the statute of Edward 6, as to this, and perhaps more directly.

Acts of parliament that contain political provisions for making regulations, or for avoiding things not wicked, but which may be inconvenient, have not always this consequence, that actions done contrary to what they designed in the very cases then in view will be criminal, and much less in cases not in view.

Our law is sparing, in making the doing a thing a crime, which may be rectified and redressed another way.

There are several acts of parliament to restrain ecclesiastical persons from making long leases, to prevent the inconveniences such leases may bring upon their successors; these acts declare such leases void, which therefore are against the intent of those laws; but it was never thought that the making or accepting such leases was criminal.

The sense of the law-makers is to have no consequence, but what necessarily follows from the provision by them made.

What they intended was, that the successor, if he pleased, might set them aside; which would have this effect, that none would take such leases, or they would do it on terms advantageous to the successor, or with a resolution of being so good tenants, as that the successor would not take advantage of it: so that either the lease would be vacated, or the inconvenience would be prevented without, which fully answers the end of the act. And this is very applicable to the statute of Edward 6.

In this act of Richard 2, the inconvenience provided against is only in elections or nominations by numbers; the provision is by taking an oath.

If such oath be taken and broke, that is a crime; for that is the necessary consequence of the provision made, violation of an oath being undoubtedly criminal. But where no oath is taken, much more where none is required, I do not see how doing the thing can be a crime; merely because in some cases it is in this manner provided against, and would be criminal if in doing it an oath had been violated.

One thing intended to be entirely prevented in cases within this statute is solicitation, or desiring a place.

But has it ever been construed, in consequence of this provision, that if I put a person into an office, who ever asked that or any other, I should be a criminal, though I never took this oath?

Then the consequence will be, that the asking a place, or the modest offering a man's self for it, (which would be suing or pursuing for it in the words of the act,) will lay him under a perpetual disability of having that place, or any other.

Nay, since asking a place is what the statute has made a provision to prevent; whoever asks a place, does a thing intended to be prohibited by the statute, and is therefore criminal.

Was this ever the construction of this act?

Nay, every one that assists in what was thus intended to be prevented will be criminal, and so will every one that asks for another at his request.

My lords, at this rate the statute will be very extensive.

I would beg leave to mention one case more, nd hope the gentlemen of the House of Com- ions will not take it amiss, or look upon it as ny disrespect to them.

By the statute 1 Hen. 5, cap. 1, " It is en- cted, that knights of shires be not chosen un- ess they be resident within the shire where hey shall be chosen, the day of the date of the rrit of summons. And that the citizens and urgesses of the cities and boroughs be chosen nen, citizens and burgesses, resiant, dwelling nd free in the same cities and boroughs, and o other in any wise."

The statute 23 Hen. 6, cap. 15, recites this ast part of that statute, and enacts, that it be fully kept in all points.

And this is the statute upon which actions used to be brought, in our time, for false returns of members to parliament.

This is in direct words a prohibition of any person's being chosen that is not resiant: But since the natural effect of this provision would be, that (the subject-matter thereof being the case of a legal authority conferred by the choice) persons chosen, not being so qualified, might in consequence of this law be rejected.

If this political provision be not complied with, is there another consequence to follow, instead of redressing it this way, and the parties concerned to be therefore made criminal?

Is it criminal in those who chuse for their representatives in parliament, persons not only not resiant, but whom they never saw?

Is it criminal in those unqualified persons, to presume to take their places in the House?

Is it criminal in the other members, knowing such to be amongst them, not to turn them out *ex officio*, even though no complaint be made from without doors?

I think not.

Yet I apprehend that will be the consequence, if laws of that nature are thus to be explained, and every action is to be judged criminal, which any act of parliament has made any sort of provision to prevent.

As to the statute of 5 and 6 Ed. 6, cap. 16:

Although it has made provision against the sale or disposal of offices for money, yet no- thing can be inferred from thence in support of this prosecution.

But that your lordships may take a better view of that law, permit me to lay before you a few observations.

The preamble sets forth the end for which this restraint was laid;

" For the avoiding of corruption which may hereafter happen to be in the officers and mi- nisters in those courts, and places, and rooms, wherein there is requisite to be had the true administration of justice, or services of trust:

" And to the intent that persons worthy and meet to be advanced to the place where justice is to be administered, or any service of trust executed, should hereafter be preferred to the same, and no other."

Here is mention made of corruption, but it is that which may happen in the officers ap- pointed, it calls not the taking money upon the appointing them corruption.

It in effect says, what I have before said,

That giving and taking money is a tempta- tion to those who dispose offices, to put in sometimes unfit persons; to those who buy to extort and be corrupt: And consequently that if this practice continue, there will be instances, in which this temptation will so far be yielded to, that persons not worthy will sometimes be preferred, and those persons will some of them venture upon being guilty of corruption.

But to avoid all the corruption which may happen in those instances, and to the intent that this temptation may in no case prevent, but that worthy persons be advanced, and no other in any instance, the statute is made.

The main end whereof is answered, if worthy persons be advanced, and they be not corrupt, but behave themselves well.

What then is the particular provision made by this statute? Not making way for an ar- bitrary punishment, by declaring it to be cor- ruption, or criminal, or against the provision of any former law, to give or take money for an office.

Not declaring that it shall be criminal for the future.

Not even enacting, that no person shall take or give money for an office: which might make the contravention of this law a crime for the future:

For it is remakable, that this statute has not so much as any prohibitory words in it;

But the whole provision is barely putting the case by way of supposition, " if a person do take money," &c. and declaring the conse- quence, which consequence is, that the person taking the money, if it were for an office shall lose the nomination to that office; if for a deputation, he should lose his interest in the office: And the person paying shall be ad- judged a disabled person to have, occupy, or enjoy the office or deputation. That is, as ap- pears afterwards, he is disabled, so far as concerns himself, his right to have it, and to continue the taking of the profits: But not so far as the public has benefit by him: For by a proviso for that purpose, all acts done by him are valid.

The effect of which is, that the officer who comes in for money holds that office precari- ously, which would otherwise have been for life, and is wholly at mercy, if he gives the least occasion of complaint against him; and since he that put him in has lost the nomina- tion, there accrues to the king a right to fill the place with a better man in case he thinks fit.

And therefore I will not controvert, but that the right of power of nomination to an office may, by prosecution grounded upon this statute, be taken from the person who enjoyed it, and vested in the crown.

But as there is no such power of nomination to these offices now in me; but I have lost it with the office of Chancellor, and therein have suffered a much greater loss than that of those

nominations only; no judgment can be given against me upon this act, and therefore neither can there be found upon it any prosecution against me; for that is but a method of praying and obtaining a proper judgment.

And to adjudge, that upon the case which has happened (supposing it to be within the words and meaning of this statute) any punishment shall be inflicted, or any consequence follow, beyond the loss of the nomination, is (with great submission) to go quite out of this statute.

Thus I have endeavoured to make out what I first proposed, that the receiving a present upon these occasions is not criminal in itself, or by the common law, and that there is not any act of parliament whatsoever by which the same is made criminal, or subject to any punishment or judgment which can be prayed in this prosecution.

My lords; all this reasoning is greatly fortified by usage, by my predecessors; which usage is expressly proved before your lordships by all the Masters, who could not refuse giving testimony; that is, all the present Masters admitted by my predecessors, who are indemnified by the act of this session for that purpose: And, I think, is proved too by the former Masters now living, who declined giving an answer to the question, when asked, what they gave or knew given; making this their excuse, that by our law no man is bound to accuse himself, and that to own they had given money would expose them to the penalties of this act. For whatever might be the consequence of owning they gave money; there was no danger in saying they gave none. And they might have given an answer in the negative safely, but that the truth and their oath would not allow them to do it.

And this refusal of theirs to answer, was not a contrivance of mine, they were supported in their objection by the gentlemen that are Managers, who were pleased to give their assistance to defend them from answering the question.

And might I have been allowed to have given evidence of what has been from time to time declared, by parties concerned, who are now dead, it would have been proved much farther.

But I apprehend the thing is notorious; although some proofs have been offered for form's sake, yet it was equally well known before; known to all the world.

Give me leave likewise to argue farther upon this whole matter from what I said once already, that it is admitted there is not one instance, that such taking money has been punished either at common law or upon act of parliament; that this, according to the rules of our law, is one of the strongest arguments that it is not punishable. For it is not to be presumed, but that it has been often done; the statute of Ed. 6, takes notice of the practice, not only of doing it, but of entering into formal contracts, and bonds for that purpose.

Littleton, our most celebrated lawyer, upon a question, whether an action would lie upon a certain act of parliament, rests upon it as a decisive argument in favour of the negative, that it was never seen or heard that any action was brought upon that statute; alledging that if any action might have been brought for this matter, it must be taken, that at some time or other it would have been put in practice. And the lord chief justice Coke, in his commentary upon Littleton, observes, that as usage is a good interpreter of laws, so non-usage, where there is no example, is a great intendment (as he calls it) that the law will not bear it. Not that an act of parliament (as he goes on) can by non-user lose its force; but that it may thereby be expounded, or declared how the act is to be understood.

This is what I have to submit to your lordships, that the taking money for offices is not criminal, which, I apprehend, is the whole charge in the Articles, except the manner of taking it varies the consideration, which I shall take notice of afterwards.

There is not the least pretence, that money was given for putting in persons unqualified, the supposed crime is singly the taking money.

And as to what has been said by way of comparing it to the case where any judicial order or determination is made for a bribe; give me leave, with great submission, to insist upon it, that there is not the least parity at all betwixt that and the present case: for in matters of judgment, if the party have a right to what he sues for, he ought not to be put to buy his own; and much less, if he has not a right, should he be at liberty to purchase of the judge, that which is the right of another.

But this is not matter of justice, but matter of favour and pure bounty; whether I put in this man or that man into a place in my disposal, depended wholly upon my own choice and pleasure; so that the cases are not at all alike.

A bribe strikes at the root of the equal administration of justice; it is a professed bias, and can mean nothing but to destroy indifferency, and to render the judgment partial.

It is therefore disallowed in all nations, and in all ages; and is expressly forbid by the law of God. And had the gentleman who touched upon the text which condemns gifts, been pleased to cite it at large, it would have appeared to relate to bribes given in cases of judgment, Deut. xv. 18, 19, "Judges and officers shalt thou make thee in all thy gates—And they shall judge the people with just judgment. Thou shalt not wrest judgment, thou shalt not respect persons, neither take a gift. For a gift doth blind the eyes of the wise."

As to the manner of taking money in the several Articles 5, 6, 7, 8, the case stands thus:

5. There are in all, eight Articles relating to this matter; but they have proceeded only upon four: the first of which is the fifth Article, and relates to the money taken on Mr. Kynaston's admittance.

Upon their own evidence it appears, that Mr.

Kynaston was well recommended by Mr. Bayly, a person of a very good character; that the first and only message brought to me, with relation to his admittance and the money to be paid, was this; that he desired to be admitted on the surrender of Mr. Rogers, and would make a compliment of 1,500 guineas, or, if I did not think that enough I should please myself: and my answer was, I was pleased with the 1,500 guineas, and he was admitted.

It has been endeavoured to make what was then done odious; by representing, that Mr. Kynaston first offered 1,000*l.* but Mr. Cottingham would not propose it; that it was worked up by Mr. Cottingham's telling him that he had bought a good office; that Mr. Rogers had told him he usually made 1,700*l.* and sometimes 2,000*l.* per annum of it, and that he understood the profits arose out of the ordinary profits of the office, and the use of the suitors' money together.

As to the offer of 1,000*l.* Mr. Cottingham, a witness produced by themselves, denies it, And Mr. Bayly, their other witness, who first broke the affair to Mr. Cottingham, and at his return from him, told Mr. Kynaston that Mr. Cottingham said 1,500 guineas would be expected, swears, that Mr. Kynaston immediately submitted to what Mr. Cottingham had so mentioned, only he said he thought it had been but 1,500*l.* And this was before Mr. Kynaston saw Mr. Cottingham.

So that Mr. Kynaston's oath is directly contradicted by the oath of Mr. Cottingham, one of their own witnesses; and is highly improbable from what Mr. Bayly another of their own witnesses swears.

And as to what Mr. Cottingham said about the goodness of the office, he swears it was after the 1,500 guineas were agreed to be paid. And indeed upon that depended not so much what he was to present to me, as what he was to pay Mr. Rogers, which had been agreed upon before Mr. Cottingham was spoken to.

So that here is nothing but my accepting a sum of 1,500 guineas, which was proposed to me as a voluntary offer, when I was at the same time told I might have more, if I would insist upon it; without one aggravating circumstance, with relation to the person admitted, or what I did.

The next of these Articles is the sixth, which concerns Mr. Thomas Bennet, and the money given me by him, on account of his being admitted Master upon Mr. Hiccocks's surrender.

And the whole of the fact, so far as I was concerned in it or knew of it, was but this: that Mr. Cottingham informed me of a voluntary offer made by Mr. Bennet of 1,500 guineas, which I accepted. I believe he thought himself not ill used, and I being then extremely ill, he pressed to be admitted, for fear (as Mr. Cottingham swears he thought) of falling into worse hands. On Thursday, and in the nights before and after, I remember I lost near 50 ounces of blood, in about 24 hours. And that night Dr. Mead told Mr. Cottingham, that if the distemper had not a turn very soon, I could not live 24 hours. On Friday Mr. Cottingham says, the Doctor told him the distemper had a turn: on Saturday morning Mr. Bennet, after great importunity, was admitted while I was in bed, but company kept out of the room as much as could be.

This is what they have proved by Mr. Cottingham.

Mr. Bennet, who mentions nothing at all of me of his own knowledge, but of the kindness with which I spoke to him, and told him that he was admitted by a dying Chancellor, is their other witness, who is to shew invidious circumstances. And very solicitous he seems to be to do it.

He takes care to say, that he was ordered to come alone, and bring nobody with him; as if it were the better to keep secret the payment of the money, though he knew my great weakness was the reason.

He affects to say, the Bank-notes were taken out in feigned names, and that it was not thought proper to use my name or his. Though upon another Article, when he is examined again, it comes out, that the feigned name was that of his clerk, whom he sent to take out the notes, and it was merely Bennet's own doing.

He says, he offered 1,000*l.* to Cottingham at first, and tells a long dialogue they had about it, but Cottingham himself upon his oath denies it all.

So that here, at last, nothing is proved that passed with me, but the 1,500 guineas being offered to me and accepted.

And give me leave to observe, that the two sums of these two Articles were certainly not paid out of the suitors' money. For whatever other objection may be made against taking the present before admission, it has this effect, to shew that it came not out of the money of the suitors.

And yet there being a pretence (without stating the circumstance of time, which I have just taken notice of) that they were paid out of that money, and that the suitors were in danger of being sufferers; I brought money into Chancery, to be subject to the orders of the Court.

The two other Articles, the 7th and 8th, were upon admissions to places vacant by death.

The 7th Article concerns the case of Mr. Elde; and the fact, as they have themselves proved, is thus:

Upon the death of Mr. Fellowes, the former Master, 5,000 guineas is offered and given to me by Mr. Elde; 6,000*l.* is offered by another.

It is admitted, that Thomas Bennet about three quarters of a year before upon coming into his place gave his predecessor, who surrendered to him, 7,500*l.*, and to the great seal 1,575*l.* in all 9,075*l.* and that Mr. Kynaston, two years before him, gave his predecessor 6,000*l.* and to the great seal 1,575*l.* in all 7,575*l.*

And Mr. Elde, a man of unblemished character, of a good estate, and not one objection to his fitness, is admitted, though he pays so very much short of what others had paid, and less than was at the same time offered.

And of this that he paid 3,400*l.* was returned to him, and only 1,850*l.* retained.

I will not trouble your lordships in relation to what my private intentions were in that transaction; if they were capable of being proved, I believe your lordships would not dislike them.

Some little reflection has been made upon the money being brought in a basket, as if it were for privacy, and even to conceal it from Mr. Cottingham.

Whereas it plainly appears to have been without any design, and only Mr. Elde's making use of a convenience he accidentally had in his chambers.

But if there had been an intention to conceal it from Mr. Cottingham, why was he the hand to convey any thing? Why was he the person to bring up the basket? Mr. Cottingham knew 6,000*l.* had been offered by another, and might rather guess this to be more than less.

And had Mr. Elde not been himself examined (which at that time it was not expected he would be), and Mr. Cottingham proved, that Mr. Elde had told him he would give 5,000*l.* for the place; that another offered 6,000*l.* that he had told me of it; that Mr. Elde after delivered him a basket, which by its weight he believed to have money in it; that he brought it to me; and that Mr. Elde was that day, or very soon after, admitted: according to the candour of construing my actions, this would have been said to be a convincing proof, that there was 6,000*l.* in the basket, or more: it being impossible for the avaricious temper of the earl of Macclesfield, for his impotency of mind, his constitutional weakness in matters of money, not to take the greater sum.

The 8th Article concerns the case of Mr. Thurston.

There, upon Mr. Borret's death, 6,000*l.* was offered me by another worthy gentleman, but Mr. Thurston was admitted.

He says he gave upon that occasion 5,000 guineas, but that all above 2,000*l.* was returned.

My lords, since what passed relative to that matter is not capable of proof, I will not trouble you with the particulars of it, which might be material.

Mr. Thurston is likewise a person unexceptionable; Mr. baron Gilbert, now one of the lords commissioners for the custody of the great seal, gave me an extraordinary character of him, and that determined me in his favour.

But there is no objection to him neither, and therefore there needs no proof.

This is the state of the fact upon these two Articles.

This is so far from extortion, the money is voluntarily offered.

So far from avarice, the greater sum is refused, and a less taken. And even the greatest part of that returned, 3,400*l.* in the one case, and 3,250*l.* in the other.

And the persons such, that, were I to go through Westminster-hall, I cannot easily pick out two better men.

Upon the whole, all that can be pretended to be in my hands now, upon these four Articles concerning Mr. Kynaston, Mr. Tho. Bennet, Mr. Elde, and Mr. Thurston, which are all the Managers have proceeded upon, relating to money received from the Masters, is but 3,850*l.* that is, 1,850*l.* from Mr. Elde, and 2,000*l.* from Mr. Tharston; the rest having been all returned.

And as to that which was given back to Mr. Thurston; he has sworn, that he was sent for several times, in order to have part of his money returned, and received it before the first seal after Michaelmas, near a month before any order by the lords of the council to call for the accounts, and while every thing was in the same state as when he paid it, and from his evidence it cannot be judged to be any thing but the effect of generosity.

Mr. Elde's was not returned till after the accounts were begun to be taken, he continuing a long time in the country; but when he came to town he had it.

The 9th Article relates to 100 guineas given me by Mr. Tho. Bennet, upon his disposing of his office of Clerk of the Custodies or lunatics to Mr. Hamersly.

The evidence is quite contrary to the Charge, as it is laid in the Articles, and amounts but to this, That Bennet having agreed to dispose of his office to another, sent me a present voluntarily of 100 guineas upon that occasion, and though I, at that time, knew that more had been given in the like case, I was contented with that, and accepted it.

This is within the same reason as the case of the Masters: it has been practised by my predecessors as a right of their office, upon dispositions of this office, and others of the like nature.

Besides the proof of what had been paid to the great seal, upon another disposition of this office; it has been proved, that another of my predecessors, the late lord Cowper, declared his opinion, that he thought it his right to have a present: and he having then passed a grant of this very office without having had a present, upon the party's having pretended and assured him that it had not been usual to give any for that office; he expressed great dissatisfaction, and declared that he thought he had been imposed on, that he saw no reason why that office should not pay as well as others of the like nature; which implies both the fact of receiving gratuities, or presents upon transfers of such offices, and his claiming a right to receive them.

As to the discourse Mr. Bennet pretends to have had with Mr. Cottingham, Mr. Cottingham denies it; and as they both are produced

by the Managers to this point, this is a clashing between their own witnesses; and that cannot be said to be proved by them, which is affirmed by one of their witnesses, and positively denied by the other.

And if there had been any such discourse, it is not brought home to affect me; for there is no pretence that I knew any thing of it.

But as to the whole fact wherein they differ, I think, from the character that has been given of Mr. Cottingham, and what has appeared of Mr. Bennet, it will be no question at all, which of them two should be believed.

As to the 10th Article, there is no evidence given.

The next Article is the 11th. And the substance of it is, "That in order to advance and increase the illegal and corrupt gain arising to myself from the sale and disposal of the offices of the Masters of the Court of Chancery, in violation of the trust reposed in me for the care and protection of the suitors, I did admit several persons to the said offices of Masters, who at the time of their admissions were of small substance and ability, very unfit to be trusted with the great sums of money and other effects of the suitors lodged in their hands."

The Masters are not by this Article charged with the want of any other qualification whatsoever, but that of estate: nor is there the least proof or pretence, that they were not in all other respects men of abilities equal to the duty to be discharged by them, honest and unexceptionable in point of reputation; but the single objection to them is, that they were persons of a small substance.

The proof offered upon this Article is this:

They have produced three orders made in the Court of Chancery in the months of January and February last, whereby it appeared that Mr. Conway, Mr. Kynaston, and Mr. Tho. Bennet, had not at that time brought in all the money that appeared to be then in their hands belonging to the suitors of the Court. This is their whole proof.

But I am entirely at a loss to know how this can be stretched to prove, what ability they were of at the times of their respective admissions, or indeed that they are not of ability now to pay their whole balances, merely because on such a particular day they had not paid their respective balances into court.

Nor is there the least proof, that I had any reason to suspect their ability when I admitted them.

Mr. Conway had an estate of between 5 and 600*l.* per ann.

Mr. Kynaston was represented to me as a man of substance: now that he comes under another Article, to swear it down, he owns that he has an estate of 4 or 500*l.* a-year, with timber upon it worth 2,500*l.* and had likewise at that time in money in the funds, to the value of 2 or 3,000*l.*

Tho. Bennet was esteemed a man of a very good estate and substance. He is the person to swear himself now worth nothing. And, to do it effectually, he sticks not at owning, that he has mortgaged part of his estate for more than it is worth. Yet there is upon your lordships' table the particulars given in by him to the Court of Chancery, wherein his estate, besides that which he says he purchased since he was Master, appears to be about 500*l.* per ann. and he owns he had, when he was admitted, a place for life of 250*l.* per ann. which he after disposed of. He says he was worth 20,000*l.* and had been sufficient still, but for the losses in 1720, which he owns were not known to me, nor generally suspected.

But, my lords, these two gentlemen are making their circumstances mean, in order to get back the money they paid for their offices; which they could not do by their own oaths, directly for their own uses: and therefore they have thought fit to keep back so much of the money of the suitors, when called upon to bring it in, that so the suitors may complain to the Court of Chancery, and then their oaths may be made use of, for the suitors to found a demand upon against their predecessors.

And it is pretty remarkable, that their deficiencies are neither more nor less than the sums they at first paid to their predecessors, and to me, upon their being admitted to their respective offices. In this, therefore, I apprehend your lordships will think their oaths are of very little value. It is hardly to be imagined, that they should have been so long in their offices, and have just saved nothing, nor wasted; and that they are not a single farthing either richer or poorer.

But whatever your lordships' opinion, with respect to that, may be, I own I cannot but think, that there is something very extraordinary in the attempt; that these two men have agreed with two Masters that were in possession of two good offices for life, to give one of them 6,000*l.* the other 7,500*l.* for their places; and now, that they are got into possession, would have the money back, and continue in the places too: that is, in short, they are tricking those Masters out of their places, under pretence of buying them.

But whatever their behaviour or their estates may now be, they appeared to me persons of reputation and fortune, when they were admitted: and I do not observe, that the Article hath so much as suggested that I knew any thing to the contrary.

One of the Managers wondered that I should let in persons of no fortune; and he solves it only by this, that they would give better prices.

That had been something, if the price had been given to me; but leaves it incredible, that I should let in any, that I had the least suspicion had no fortune: for the old Masters to receive 6,000*l.* and 7,500*l.* at the same time that they represent me acting upon the view of burying the Masters, and having the whole price myself.

Where I was to have the whole price, and

the temptation was greater, there is no pretence I took in men of no fortune. And is it possible to think I would do it, where the Masters were to have the price, and I so small a proportion?

Great stress has been laid on comparing the sums in the Masters' hands, with their estates; in order to shew their unfitness to be trusted with those sums.

How that proportion is to be adjusted, I own I am a little at a loss. Here is a Master that has an office that brings in a considerable profit, and is worth 5,000*l.* which cannot be run away with: he has a handsome visible estate of 4 or 500*l.* a-year, and a good reputation. How much money may he be properly trusted with? I do not mean as a borrower, who may be presumed in some want, of one sort or other, because he borrows: but as a cashier for the suitors? There are very few bankers that have such a fortune to set up with. And I do not see that any of those bankers, that is a man of good reputation, and good credit (though perhaps he has not a good fortune of his own) is thought the worse of by those who deal with him, because he is trusted with very great sums, far more than he is worth. The more he is entrusted with, the more are his gains, and the safer all think themselves that have money in his hands.

There is in the close of this Article another charge, That "I did publicly in open court, falsely represent the Masters admitted by me, as persons of great fortunes, and in every respect qualified for the trust reposed in them, to the manifest deceit and injury of the suitors."

My lords, as to that, I think nothing can more plainly shew, than this Article, and what has been said upon it, the forced constructions put upon what I do.

Mr. Waller proves, that in July 1723, I declared in court, that the "Masters were persons of as good fortunes and abilities as any set of Masters had ever been before them." Which is spoke of the whole body of Masters, and not of those only who were admitted by me. He says he was astonished at it. But he has given no reason why. If he knew any thing, that any of them were not such as I described them; a little candour would have made him believe, that I was not rightly apprized of their characters; and a little concern for the honour of the Court, wherein he was a practiser, would have made him set me right.

But, my lords, is there any reason assigned, why I should think otherwise than I spoke?

Mr. Lightboun is examined, to prove, that he told me, some of them were suspicions: but he does not say any such thing. All he says is, that he took notice to me of Mr. Dormer's misfortune, and told me, he knew not how soon the like misfortune might happen to others; which might be, (though they were all sufficient) if the person, with whom they should deposit effects, upon going into the country, should fail.

But his expression is a little remarkable; that he cannot say he told me any of the Masters particularly were suspicious, "For he did not know how far he might be liable to an action." An action? What! for one Master informing the Chancellor of the circumstances of other Masters, in order to have proper care taken! Could he fear it! Who was to be the witness? What must be the ground of the action, if he told nothing but what was true?

But I think, he said he had not any particular grounds for his suspicion; and he says, I was unwilling to believe it of any of them. Why? Because (as he says I told him) I had had very good characters of them, and therefore I hoped they were all good men.

It was not very kind, in that gentleman, to call it an unwillingness to believe, there was ground to suspect them; when I assigned some reasons, why I should not suspect them; and he gave me none, why I should.

So that here appears not any reason, why I should believe otherwise than what Mr. Waller heard me say.

But to what end should I say it, if I did not believe it? Or how were the suitors injured, or deceived by my saying so? Mr. Waller was not deceived. Was any body else deceived? Or could any one be injured? But they have discovered a reason, why I said it: They say that Mr. Fellowes was just dead, and there was a Master's place then vacant: and that fact they have proved. But can any thing be more strained, than their inference from it? Did I design, by saying these Masters were men of fortunes and ability, to raise the price of that vacancy; or to tempt beggars to come in, that cared not what price they gave? Does not what was then done clear me of all suspicion of that kind? Mr. Elde was the person then admitted, a gentleman of very good estate, of very good character in Westminster-hall, and 750*l.* more offered by another, that was no beggar neither, refused. And after that, Mr. Thurston was admitted, preferably to one that offered 6,000*l.* Is it possible, that I should give better proof that I had not that avaricious view in it, that is suggested?

It was observed by one of the gentlemen that opened the evidence, that this was upon a remarkable occasion, when the Master of the Rolls had made an order upon one of the Masters, to make a suitor some compensation out of his own money in the Master's hands, and I set it aside. And Mr. Waller began to tell something of the merits of the case. But a very learned and a very judicious gentleman, one of the Managers, was pleased to say, They did not dispute the justice of my order: nor is there any charge of such injustice in the Articles.

The next Article is the 12th, which sets forth,

"That whilst the said Thomas earl of Macclesfield executed the office of Lord Chancellor, an unjust and fraudulent method was prac-

sed in the Court of Chancery upon the sale of ffices of Masters of the said Court, and upon ie admission of new Masters, that the prices r sums of money agreed to be paid for the urchase of the said offices, and for the admis- on thereinto, were satisfied and paid out of the ionies and effects of the suitors of the Court eposited in the hands of the respective Mas- :rs, surrendering their offices, or dying; either y way of retainer of the purchase in the hands f the Master resigning, or of replacing the ioney disbursed for such purchase or admis- ion by the succeeding Master, out of the aoney and effects of the suitors coming into is hands; by which practice the price and alue given upon the sale of the said offices, nd admissions thereinto, during the time afore- aid, were greatly advanced, and several per- ons of small ability and substance were encou- aged to contract for the said offices, upon a rospect of the easy method of paying for the urchase of the same, by means whereof great leficiencies have incurred in the offices of se- eral Masters of the said Court, admitted by he said Thomas earl of Macclesfield, which hey have not been able to answer and make ood; and although the said practice was no- orious and public, and the said Earl was well nformed thereof, and fully acquainted there- with, yet the said Thomas earl of Macclesfield, n order to increase his own unjust and corrupt profit in the selling the said offices and the ad- missions thereto (which in consequence of this evil practice was raised and received by him out of the effects of the suitors, for whom he was entrusted) did not at any time, whilst he continued in his office of Lord Chancellor, use or take any measures to reform the said abuse, or to prevent the same; either by causing proper schedules to be taken of the money and effects of the suitors delivered over and trans- ferred, or by appointing any person in his be- half, to inspect or supervise the transfers or de- liveries thereof, or in any other manner. But on the contrary, the said Thomas earl of Mac- clesfield, unjustly, corruptly, and contrary to the duty of his said office of Lord Chancellor (to whom the superintendency of the said Masters and of their accounts did appertain) did suffer the said fraudulent practice to proceed and be exercised without any controul or check, whereby great embezzlements have been made of the suitors' money and effects, to their great loss, in the offices of several of the Masters of the said Court, who have not been able to an- swer and pay their respective balances owing upon their accounts, in breach of the trust re- posed in him for the preservation of the estates and effects of the suitors; to the dishonour and discredit of the said Court, and to the great in- jury and defrauding of the said suitors in a court of equity, established for their relief and protection."

My lords, in support of this Article, two of the Masters, Mr. Kynaston and Mr. Thomas Bennet, have sworn, that their predecessors stopt the price of the places out of the suitors' money, which was to be delivered over to them: and that they gave the greater price for their places, because they found this an easier way of purchasing them. Indeed I must con- fess, that, according to the manner of proceed- ing of these two gentlemen, it will come out to be an exceeding easy way, which they have discovered: since, if they can prevail in their present attempt, they will have paid no price at all for them; they are to have their money back again, and not to be in the least impove- rished by the transaction. But is there any proof, that I was (as the Article charges) well informed of it? Or that I knew any thing of it at all? Not in the least, but only upon the oath of Mr. Thomas Bennet, who swears, that in a conversation with me about a treaty between him and Mr. Hiccocks, I took notice of an ar- ticle in his account, delivered in to the lords of the council, wherein he mentioned 9,075*l.* of his cash to be in the hands of persons of ability, meaning, as he after explained it, in the hands of Mr. Hiccocks his predecessor and myself; and said, I was sorry for it, because it was discover- ing the method of paying for their places out of the Court money, which I had taken care constantly to deny.

This (supposing my meaning to be what he would have) is surprizing. He says, that at the beginning of this discourse I was so cau- tious, that I would not speak to him about re- turning the money I had had, because probably he might be examined about that conversation in another place. And yet he pretends that in the same conversation I told him this. But does even he pretend, that I ever knew this, which I had taken care to deny? And was this a time to tell him of it, when he says, I expected he might probably be examined about his conver- sation with me?

But I believe your lordships will not give him the least credit, in this or any thing else that affects me. I beg leave to remind your lordships that I asked him whether he did not then tell me, that, if Mr. Hiccocks would give him 2,000*l.* he would pay the rest of the money (which was to shew that he was worth at the least all but that 2,000*l.*) He denied it. My lords, I then told your lordships I could not disprove him in that, for I cannot be a witness for myself. Therefore I asked him to another thing, wherein, if he did not tell the truth, I might be able to falsify him; I asked him, if he had not said so to somebody else? He posi- tively said, No. He said there was such a re- port, but he denied the thing. At last he did own that he had said, that if Mr. Hiccocks would repay 2,000*l.* he would stand it, or run the hazard. but never told any body he would pay the rest; he was not able. But Mr. Hol- ford swears, that Mr. Thomas Bennet sent a message by him to Mr. Hiccocks, that if Mr. Hiccocks would repay 2,000*l.* he would dis- charge the article in the account, and take care to pay the rest, and he believed that Mr. Ben- net was able to pay it, or he would not have

But they charge and argue, although they have proved nothing, that I have neglected my duty.

My lords, it is proved that I did a great deal more than they have proved to be my duty. And what did I omit?

Obj. I did not (say they) secure his person.

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But I would beg leave to ask, why should I neglect what was proper?

The reason they assign is, that if I had done these things, it would have made a noise, and brought the matter out.

My lords, what could make a greater noise, than that a Master in Chancery absconded, and no money was received or paid, nor business done in his office from November to May, and then another put in his place.

One of the gentlemen expresses his astonishment, how it could enter into my heart, that this could always be concealed, or that so ghastly a wound could ever heal of itself, without the application of proper remedies.

My lords, it is yet more astonishing that it should enter into my heart to endeavour to conceal it, for those reasons which he supposes I had in view. And I should have thought the arguments that raised his wonder at my having done so, strong arguments that I never did it; and indeed it is impossible I should endeavour or hope to conceal that, which I knew was so notorious and publicly known. Nor was I without endeavours towards healing the wound; some of those endeavours are attempted now to be made part of my crime.

The 14th Article suggests, "That the said Fleetwood Dormer having towards satisfaction of the suitors of the said Court, assigned to Henry Edwards, esq. (who succeeded him in his office of Master of the said Court of Chancery) a debt of 24,046*l.* 4*s.* or some other great sum due from William Wilson, a banker, to the said Fleetwood Dormer, to the intent that the money received on the account thereof, should be applied and disposed of as the said Court of Chancery should order and direct, the said Thomas earl of Macclesfield, whilst he continued Lord Chancellor of Great Britain, for the unlawful purposes aforesaid, without regard to the interest of the suitors, by colour of his office, did, in an unwarrantable, clandestine, and unusual manner, authorize, direct, and establish, a precarious and trifling composition with the said William Wilson, upon the terms of the said William Wilson's paying the sum of 1,463*l.* 2*s* 1*d.* and assigning 10,000*l.* part of a debt of 23,060*l.* 12*s.* 5*d.* pretended to be due to the said William Wilson from Edward Poulter, or to that effect, in discharge of the said debt; and to that end, upon the report of John Hiccocks, esq. then one of the Masters of the said Court, without any attendance ordered or had thereupon, and without notice to the said suitors, did, by a private order not made in open Court, order the said Henry Edwards to accept of the said composition, in full discharge of the said debt, which said Edward Poulter was a person insolvent, and has since absconded for debt, and none, or a very small part of the said 10,000*l.* has been, or is very likely to be received."

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Obj. But Poulter was insufficient, and the debt assigned from him worth nothing.

Resp. As to Poulter's circumstances at that time: Some persons have been called, who have proved (it is true) that he was insufficient at that time, and could not pay more than 3 or 4,000*l.*; but the same witnesses give an account, that his ill circumstances were then known but to four or five persons of his acquaintance, and that by all other people, who had any knowledge of him at that time, he was looked upon to be very sufficient; he had left off his business upon having raised an estate; he was of good reputation: he lived at Hackney in a house making a good appearance, with good furniture, and a great quantity of plate, till the last, till the time of his being put in prison, which was not till last year, that he surrendered himself in discharge of his bail.

But suppose he was not sufficient, how does that affect me; I was not obliged to concern myself with it, and left the composition to the management of the Masters; they made it: Wilson had sworn an affidavit in writing, of his circumstances, and this was as much as he could pay to the suitors: Mr. Hiccocks, a gentleman of very good reputation, was the Master, he being then senior Master, to whom I referred the consideration of it, according to the course of the Court; he was upon his oath in what he acted therein, and made his report, that he was of opinion this composition would be for the advantage of those to whom the money was to be paid. And upon that I grounded the order.

Obj. But the suitors had no notice to dispute it.

Resp. The consequence of that is only, that Mr. Edwards being their trustee, and Wilson knowing it, whatever could be done between them would not bind the suitors, if it were any way detrimental to them: Therefore they have the benefit of all that has been got in upon it, and yet have still a right to enquire into the true circumstances of Mr. Wilson, and to recover, in proportion with his other creditors, any effects he shall appear to have unfairly concealed.

Upon the whole of this matter, could the Master, or I, have any indirect end to serve, by allowing Wilson to compound at an under rate? It is not pretended I knew him, or could intend him a favour. Why then should I designedly lessen Dormer's fund, which was before deficient, and which I was endeavouring to make up?

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But whether this was prudent or imprudent; where is the crime? This tended nothing to conceal Dormer's affairs: he was known to be broke; and Wilson's debt was esteemed desperate. There was no other view, nor could be, but to get somewhat towards Dormer's deficiency, and nobody is at all hurt by it.

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Your lordships will likewise observe, that this was the 3d of August, after the seals were over; and if I must have appointed it to come on, upon a public day (not to have it concealed) it must have waited till October; and by that time Wilson, and his effects, might probably have been gone, and the opportunity of getting any thing lost.

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But they charge and argue, although they have proved nothing, that I have neglected my duty.

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and if it be not of advantage to the suitors, they may avoid it.

The 15, 16, and 17th Articles were opened together: But one gentleman spoke more particularly to the 17th, as being of a different nature from the others; and therefore I will speak to it separately.

The principal subjects of the 15th and 16th Articles are 4,500*l.* raised by the Masters, and 1,000*l.* by myself, towards Dormer's deficiency.

In the last Article I spoke to, the crime was, lessening Dormer's effects by a trifling composition; in these, increasing them 5,500*l.* is a crime.

At first sight, one wouldt hink this commendable; but, by I know not what fatality, every thing grows criminal by my having any concern in it. My intention infects all. It is said that I intended by it to carry on my corrupt purposes, that is, as one of the gentlemen explained it, to conceal Dormer's deficiency.

But all that appears upon the proofs offered relating to my intention is, that here was a strong desire to make good Dormer's deficiency; and that way of concealing it is surely not blamable.

But then as to the 4,500*l.* it is said, that I induced the Masters to pay it by colour of my authority.

How is this proved?

Mr. Conway produces, and proves, the receipt he had given him by Mr. Edwards for 500*l.* voluntarily contributed by him towards Mr. Dormer's deficiency; and says, that he had promised it in February, and paid it accordingly in August.

Mr. Edwards says, that in 1721 he received 500*l.* a piece from all the Masters, but Mr. Lightboun.

Mr. Lightboun says, that when Mr. Cottingham spoke to him of it in February 1720, he told him, all the other Masters had agreed to it; but Mr. Lightboun refused it: that I never spoke to him of it till January 1722, which was near two years after; that then I was so far from making use of my authority, that when he asked me, whether it was my proposal or the Masters'; upon its being said, it came from the two senior Masters, he took occasion to speak more freely against it; and though I used some arguments with him, yet he says I left him to his own inclinations.

My lords, these are their proofs. But they are to be helpt out by some constructions.

Obj. It is said, that the letter which I caused to be sent in February 1720, to require them to give in their accounts, was in order to terrify them to come into a composition: for it is said, when that had its effect, and the money was paid, they were not obliged to bring in their accounts.

Resp. This then, I suppose, is that colour of authority by which (according to the charge in this Article) I induced them to contribute.

But in the first place, I beseech your lordships to consider, whether it can be thought, that any of the Masters would pay 500*l.* rather than let me know what was in his hands; which was all the consequence of my having an account? If it cannot; why should it be, without the least proof, imagined, that I should expect it?

In the second place, I must beg leave to observe, that the Masters best know, what effect that letter had upon them, and what was the motive of their advancing that money; but none of them have sworn, that they were in the least induced to pay the money by the fear of that letter, or by the apprehension of being forced to give in their accounts if they did not comply. Nor do the circumstances shew it. For Mr. Conway came in but that in February, and had but little money in his hands, and a very short account to make. Mr. Kynaston and Mr. Tho. Bennet, who are now deficient, were not then Masters. Mr. Holford had got an account ready, yet he paid. Mr. Lightboun gave in no account, and yet he did not pay.

So that upon a view of the evidence, here is a good action done, very beneficial to the suitors; and no indirect practice to bring it about.

And therefore the charge not being proved, I am, according to my general plea, not guilty of the matters contained in this Article, or any of them, in manner and form as they are therein charged against me. And there is no occasion to make out what I have stated in my Answer, to have made this matter more clear, in case they had given occasion, by having produced evidence to maintain their Charge.

However I have shewn a second letter, written by my order, in November following, requiring those accounts with more earnestness. Mr. Cottingham produces the draught of it, and though he will not swear positively that he delivered or sent it, because he does not find any memorandum of it; he verily believes he did, and has not the least ground to suspect the contrary.

Your lordships will observe, how very particular the account was directed to be.

The first letter was wrote the 14th of February, 1720. Your lordships will give me leave to read the copy kept of it.

Reads: "*February* 14, 1720.

"I am commanded by my lord to signify to you, that you do, with all convenient speed, lay before his lordship an account in several columns;

"1. Of the cause.
"2. Solicitor, or Agent.
"3. The date of the Order.
"4. For what purpose the money was brought in.
"5. How much was brought in.
"6. When.
"7. How much in hand.
"8. How much on securities.
"9. How much paid out.

A distinct Account of Securities.

"1. Cause.

" 2. From whom the security is taken.
" 3. What the security is.
" 4. In whose name taken.
" 5. For how much each security.
" 6. The total of the several securities.
" 7. In whose hands lodged.

A distinct Account of Money paid out.

" 1. Cause.
" 2. By what order, or what date.
" 3. When paid.
" 4. To whom."

The second letter is dated the 7th Nov. 1721; ad is in these words:

[*Reads.*]

" By my letter of the 14th of February last, signified to you my Lord Chancellor's pleaure, which was, that you should, with all conenient speed, lay your account before his lordhip, the method whereof was to be in several olumns, subscribed at the foot of that letter. am now farther to acquaint you, that his lordhip is very much surprised to find, that in all his time no such account hath been laid beore him; and therefore hath commanded me o tell you, that it is expected to be delivered on r before the last day of this term; and if this s not complied with, you will oblige his lordhip (though very unwillingly) to think of other measures, which I doubt not but you will avoid, by a ready compliance with what is a second time required of you. And to the end there may be no mistake as to the method of your accounting, I have subscribed it again at the foot of this letter."

And Mr. Cottingham explains what he apprehends was meant by that passage of other measures, that I would make an order in form; that is, an order of court to be entered with the Register. He tells your lordships what representations they made of the difficulties of drawing up such accounts: And I did not afterwards insist upon them. And your lordships will be pleased to observe, that the letter sent by me, in form of an order, in November last, by advice of the lords of the council, was for an account much in the same manner. The words are these:

[*Reads.*] " Dated 3d *Nov.* 1724.

" Let the several Masters of the High Court of Chancery forthwith prepare and deliver to me a perfect account of the money in their hands, therein distinguishing in several columns,

" The names of the parties to the cause.
" Money or securities.
" The dates of the orders for bringing in.
" The time of bringing in each sum.

" Particularly expressing the sums transferred and paid to them at their coming into their offices, in the first place.
" How the same hath been disposed,
" When and by what order.
" What sums paid out, and to whom,
" What invested in securities,

" Specifying the Securities by Dates, Numbers, &c.

" Where the securities are at present,
" What money remains in their hands,
" Where the same now is."

Mr. Holford tells your lordships, that another account was carried in by my order, instead of one so particular; for that an account drawn up in that manner, would have taken up several months: and in February, 1721 or 1722, it must have taken up many more; because there were then Masters, who had been much longer in their offices than Mr. Holford the now senior Master had in November last been in his: and those accounts must have gone through their whole time. And if your lordships will be pleased to look upon the Report on the table, it will appear, that the judges and directors reported, that no regular accounts could be taken, unless they were brought down from the beginning of the time that each Master had been in his office; and yet the lords never insisted on any such accounts afterwards, (though I had made an order for them by their advice) nor the lords commissioners since; which, what is it, but falling into the same sentiments that I had done before? The requiring the dates of the orders on which money was paid, and the solicitors' names (which I found not one of the Masters was able to give me) was intended by me, that I might be able to make some examination into the truth of the accounts that should be given in. And for want of that, your lordships know what methods the lords commissioners have been forced to take, to have the accounts of the several Masters printed and published, and dispersed throughout England at a public expence, that people may come in voluntarily to make a surcharge. And yet it is well known, that the preparing the present accounts, short as they are, containing only the balances of securities and cash, which the Masters owned to be then in their hands in each cause, so took up their times, that the business of the Court before them stood still for some time, and their attendance in Court was dispensed with. No wonder then if I did not insist on these accounts, which were to be attended with so troublesome, so tedious, and so fatiguing an enquiry.

These are some facts that I have not indeed examined to; but, with submission, I do not stand in need of them: if I did, they are notorious; and I believe the Managers, some of them at least, know them, and will not deny them; and the Masters, being your lordships' attendants, may be asked to them by any of your lordships who shall think there needs any further satisfaction to be given concerning them.

Obj. But why then did I not content myself with the shorter accounts, and take them, at least such as were delivered into the committee of council?

Resp. As to those accounts, I shall beg leave to say something upon them under the High-

teenth Article, which, I flatter myself, will give your lordships entire satisfaction on that head.

Upon the Sixteenth Article, I take the liberty to say as to the 1,000*l.* paid on Mrs. Chitty's account, I never expected that an act of humanity to Mr. Lockman should be made a crime.

The supposed crime, I think, consists in this, that it was in farther prosecution of my unjust and corrupt purposes, that is, keeping up my gain in selling places, by concealing Dormer's deficiency.

How is this proved?

Mr. Lockman tells of his applying to me, and my saying to him at first, that it should be paid; but telling him after, that there were not sufficient of Dormer's effects left; that the Masters were in great apprehensions of losing the profits of their places, and were not willing to advance any money; that he told me of a composition he had made, that the time was near; that then I said, I would order Cottingham to pay the money; but told him, that if Mrs. Chitty had nothing else, he might, by marrying her, make himself worse; for there would be no more money paid her thence. And he swears that he did not look upon that sum to be paid out of compassion, but only as it was due. He says, it was about a fortnight before the 1,000*l.* was paid, that I told him no more would be paid. Upon some questions put to him by me, he said, he asked for another 1,000*l.* on account of Mrs. Chitty's children: but that after I had told him, no more than the first mentioned 1,000*l.* would be paid, which was a fortnight before it was paid, he asked it no more; and denied that he applied for the payment of 500*l.* or 574*l.* after I had promised the 1,000*l.*

My lords, all this, supposing it true, does not prove that I paid this money to conceal Dormer's deficiency; for he says I told him before, that Dormer's effects were all gone; and at the time when I made the promise of that money, I told him no more of her money would be paid.

And is it rightly collected from this action, without farther proof, that my intention in paying this money, was to conceal the very thing which I at the same time expressly published?

But, my lords, it is fully proved on my part by Mr. Cottingham and Mr. Elphinstone, that this 1,000*l.* was advanced out of a generous compassion, and not out of any by-end: that his application was founded on this, that he was to marry Mrs. Chitty, and was to have this 1,000*l.* to pay a composition for his debts; that I had sent him word of the deficiency, and that he could not have the money; so the great secret was out: but that he afterwards appeared in the utmost distress and agony, in danger of laying violent hands on himself, and desperate: this distress moved me; I told him, I would order the money to be paid out of compassion to him; he afterwards spoke of it with the utmost acknowledgment: I told him this, and gave the order accordingly on Monday, and it was paid the Thursday following, which was the 30th of July; and as to Mr. Lockman's testimony, who denied that he applied for a farther sum; it has been proved under his own hand, that he applied for 574*l.* for Mrs. Chitty, on pretence she could no otherwise spare him the whole 1,000*l.* and this after the time was appointed for Mrs. Chitty to receive the 1,000*l.*

[Here the Earl of Macclesfield informing the Lords, that he found himself so far spent, as not to be able to proceed at present, the House adjourned during pleasure; and after some time, the House being resumed, the Earl of Macclesfield went on.]

My lords, when your lordships were pleased to allow me to retire, I was just upon Mrs. Chitty's 1,000*l.* and had spoke of that part of the transaction that related to Mr. Lockman. And as to the next, which is the charge of endeavouring to persuade the Masters to advance that 1,000*l.* and using the arguments in the Article mentioned for that purpose.

Upon the evidence it does appear, that there was a meeting of the Masters at my house in the latter end of July last; and some such arguments used as in the Articles, but not (as is charged) to have a present purpose of paying the 1,000*l.* answered, but to have Dormer's deficiency all made good, by small annual payments out of each office. A view, which I hope your lordships will think very innocent and commendable, whether likely to be successful or not. And this was so much the intent of my desiring the Masters to come together, that though that 1,000*l.* was the immediate occasion that discovered the effects to be then all gone, and so might naturally be mentioned, and I doubt not but it was, I do not yet remember that I persuaded the Masters to pay it; nor does Mr. Lovibond remember it; and Mr. Holford's expression was (if I took him right) only, that he apprehended it was mentioned as if the Masters should contribute to make up that 1,000*l.* However, my lords, that was not the end which I aimed at and mentioned; and upon the whole evidence all agree, that the discourse about the 1,000*l.* was soon over, and ended with my saying, That I would take, or had taken care of it. Mr. Lightboun says, he is not sure which of the two expressions I made use of. And even Mr. Tho. Bennet says, that when I had said so, nothing was afterwards said of that, but of Dormer's deficiency; and then came in the discourse of the parliament. Mr. Holford represents it, that after some discourse of the 1,000*l.* I spoke of Dormer's deficiency; and particularly of the mischief, which was what Mr. Edwards had a little before said, that some had had all, and others none, (which would not at all be cured by payment of this 1,000*l.*) and that then I mentioned, that that might make great clamour, and possibly occasion a parliamentary enquiry: where, if it was resolved that buying those

places was against the statute of Ed. 6, it might affect me in the disposal of the places, and the Masters in the enjoyment of their places: he says several things were proposed, but nothing agreed on. One proposal was, whether if the Masters were continued on the same foot they had been, it would not be worth their while to contribute?

The Masters have not had so good memories in this case as I hoped. But Mr. Lovibond does swear, that all or the greatest part did then agree, that if their offices were established, as they had been for forty years, they would make an annual contribution towards Dormer's deficiency. And he heard nobody say otherwise, only he himself (he says) did not agree to it.

So that it appears upon the whole, that what I said was not with intent to supply a present purpose, as is charged; for I had declared to them, I had taken care of that, or would take care of it. And if I could, by setting such an example, or by any arguments I could use, induce them to contribute by payments, as they could be spared out of the profits of their offices, to make good the whole deficiency, or if not all, yet to make good the proportion of those who had had no part of Dormer's effects, I see no harm; and I am sure there was no fraud in it. It is to conceal it, and prevent clamour or enquiry about it, only by paying it; which would leave no room or occasion for clamour or enquiry; or if they could not pay the whole, by paying the proportion which any one could be entitled to.

And this proposal, to have it paid by annual payments out of the several offices, did not tend to raise the price of them, but on the contrary, by laying a burden on them, would greatly diminish their value.

Whether the design I had, or the arguments I used, were prudent, or discreet, or proper, I submit to your lordships' judgment; but the arguments were not used for the purposes in the Article, but for the benefit of the suitors of the Court.

But to give this some appearance of a crime, they are forced to attribute it to criminal views and designs, of which they have made no proof, nor shewn any probability, scarce possibility, that they were the principles of this action.

I might farther observe, that the paying the 1,000*l.* and leaving the 500*l.* (which in the very same order is directed to be paid to the plaintiff) unpaid, and the 574*l.* demanded by Mr. Lockman, unpaid; would not at all hinder the deficiency from breaking out.

As to the expression charged in the end of the Article, to be used by me, I agree, I used one very near it; but with other expressions along with it (which the witness in effect owns) that shew, I could not possibly have any ill design in it; nor could any inconvenience ensue upon it. No question had till that time been laid before the Court relating to Dormer's deficiency: Chitty's was only an application for favour, for a sum then particularly wanted, because there were at that time no effects; and was paid by me out of compassion; there was no question of right about it to be decided, as was here, when the dispute was, who was to bear the loss, if any, and could be determined only upon circumstances. I at the same time was so far from endeavouring to have it believed, that there was no deficiency in Dormer's office, or that I knew not of it, that I declared a great deal, which I knew about that matter.

As to what they object, that the order is drawn up in such a manner as implies (as they say), my being wholly ignorant of the matter, by directing an enquiry, whether there was likely to be any deficiency or not:

Give me leave to say, that if I had known more of it; if I had known to a farthing what Dormer's deficiency would be; I could not as a judge found an order upon my own private knowledge, but must make it in the same manner as if I had known nothing at all; and accordingly that order is worded in the same manner, as it must have been, if I had never heard of Dormer's failure before.

Besides, it had been then talked, that Wilson had not dealt fairly in his composition; and if so, and if he were worth it, the suitors might recover near 22,000*l.* more against him. A matter extremely proper for the Masters to enquire into.

As to the 17th Article, which relates to orders for payment of monies deposited with Dormer; which Mr. Edwards (as is charged) was directed by me to pay, without regard to that proportion, which ought to have been observed in a defective fund:

They have read four orders made by me, and no more, three of them in one cause; and only one of them directs the whole money to be paid out. I said, in my Answer, that I did not know that I had made any other order than that of Chitty; but believed the Court might have made others; which gave occasion, it seems, to some of the gentlemen to wonder at the distinction between me and the Court. My meaning was, that such orders might have been made by the Court in my absence, for aught appeared; that is, by the Master of the Rolls and Judges, with others in commission for hearing of causes.

But as to what was done by me; the proper Answer to this Article, the true one, and I hope a satisfactory one, is that I acted so as I thought would be most for the good and benefit of the suitors. I fully believed all along, that the whole would be made good, to which I contributed all I could; and I acted accordingly. If I was mistaken, I hope it is no crime.

As to the 18th Article, three neglects are charged upon me in this Article.

1. Not taking proper care of the securities lodged with the Masters.
2. Not taking security for the cash.
3. Not taking the Masters' accounts.

There is another thing expressed, which is permitting and encouraging the Masters to traffic with the suitors' money and effects. But that I apprehend means only, that the not taking due care to hinder them, is permitting and encouraging them. So that it does not make a distinct branch of the Article; but is only a supposed consequence of the rest.

As to the securities and cash, what I am charged to have omitted doing, was never done before by my predecessors, nor desired then of me by the suitors. And therefore, I suppose, there is a particular reason assigned why it should have been done by me, though not before; and that is Mr. Dormer's failure, which is charged to have been chiefly occasioned by his taking upon himself unduly to dispose and employ the money and effects of the suitors in his hands. And this the Article charges that I knew.

My lords, as to this particular reason: to add a new duty to my office from it, and to lay me under an obligation to do that which my predecessors were not obliged to do; it ought to be clearly made out that the fact is true, that this was the cause of Dormer's failure; that I knew it to be so; and that thereby it became my duty unasked by the parties interested, to make the new provision expected. But there is no proof that Dormer did unduly dispose of, or employ the money and effects of the suitors in his hands; much less is it proved, that I ever knew it, or had the least reason to suspect it; but the contrary.

The account Mr. Parkhurst gave of what passed at the time of Dormer's going off, was this (which was represented to me, and never shewed to be false), that Mr. Dormer, who was his uncle, informed him, that having happened to receive a greater sum than ordinary out of the Exchequer, and going into the country in the long vacation 1720, he knew not where to leave it safer than with Mr. Wilson, an eminent banker; and he left it with him to the value of 24,000*l.*; that upon his return to town, he found Mr. Wilson stopt payment; and that therefore he would withdraw himself, for fear of a gaol; that accordingly he went into Holland, and wrote a letter from Rotterdam to Mr. Parkhurst, with one inclosed, to be shewn to the Masters, and sent to me or Mr. Cottingham; he gave some account of the letter, that it set forth the case to the effect above; and the draught thereof is in the hands of the Managers, which they might produce, if they thought proper. This I took to be the true state of the case; and never heard any thing to the contrary (except Mr. Lightboun's guesses, founded on no fact, but on the greatness of the sum, which this accounts for another way) till December last, when I was told that Wilson pretended, he borrowed it of Mr. Dormer at an high interest; but as this appears to be spoke in excuse of himself, an after-thought at four years distance is little to be regarded; and however, if it were true, ought not to affect me, to whom it was never disclosed. But according to this that I have stated above, which was certainly the truth of the case, or however what appeared to me; Dormer's failure was not occasioned by his undue disposing of or employing the money and effects; but it was a misfortune owing to the year 1720, and circumstances peculiar to that time; so not likely to happen again. On Dr. Eddisbury's failure there appeared no accident, but his own ill conduct: yet no change was made by the Lord Chancellor, as to the effects, or cash, or giving security.

But it was urged, that though this had not been desired of me by the suitors, it had been proposed to me by the Masters themselves:

And three of the Masters were called to prove this. But only two of them pretend to have spoke to me about it, Mr. Lightboun and Mr. Kynaston. Mr. Holford, the 3rd, says, He never was once with me about it, only he liked some things which Mr. Lightboun told him he proposed.

Mr. Lightboun's whole evidence, taken all together, clearly proves what I set forth in my Answer; that I had in view three things: 1. The making good Dormer's deficiency. 2. Settling Masters in their just rights. 3. Securing the suitors from future accidents. The 1st was the principal, and always uppermost with me. The 2nd was plainly necessary, in order to that. The 3rd, for securing the suitors from future accidents of that kind, I was likewise very desirous of; but, I own, at that time, while I thought the Masters then in being persons of ability and substance, and he gave me no reason to think otherwise, I apprehended there was no need of any extraordinary expedition in it.

As to making good the deficiency; it appears, that, at the time of Mr. Lightboun's proposal, the Masters were all willing to contribute; only Mr. Lightboun stood out; and his reason, which in his examination to the 16th Article he says, he upon one occasion mentioned to me as sufficient, was, that it would be a precedent for his paying other debts of other Masters. And upon his examination to this Article, he says, that he told me in discourse on that subject, that as Dormer's accident had happened, the like might again: and so often, that it could not be supported; and afterwards, that if any thing could be done to make good Dormer's deficiency, and put things upon a secure bottom, he would be as ready to contribute as any body. He then gives an account of the proposals he made, which he says, I desired him to reduce into writing for my consideration, which he did; the copy of it was produced and read, and I have the letter itself here in my hand; and here only, I apprehend, is to be found the proposal which is to affect me, and not that which he now from his memory mentions to be the proposal; but differs from the writing in several things; which not being in the letter, if he had mentioned them cursorily in the discourse, I must have looked upon them as what upon further consideration he did not think proper.

My lords, the occasion of my proposal was my speaking to him about contributing to Dormer's deficiency; and both that and the proposal itself shew, that it was really no more, than laying before me the terms upon which he would contribute.

In those terms, the principal thing insisted upon by him was, that the money should be continued to be brought before the Masters; which, I apprehend, had then been broken a little in upon: which is expressed in these words, shewing the improbability, that a fact objected should happen, "If (as his words are) the money be directed as usual to be brought before the Masters, both by your lordship and the Master of the Rolls; without which the Masters cannot think themselves much interested in the event of Mr. Dormer's affair."

The other thing he insisted upon was, that he should be secure from being exposed to the like inconvenience, by failure of another Master; and therefore what he proposes, in relation to securing the effects, is not a thing proposed to be done of itself, separately, but in company with the other regulations.

That part that relates to the rights of the Masters, was afterwards pressed farther, as it was apprehended they were more broken in upon; and produced the representation of the Masters, which Mr. Lightboun the other day mentioned to your lordships.

And this likewise explains several parts of his evidence: it explains what he says, that he pressed me so often to do something, and thought that to be irresolution, which was indeed my caution to proceed upon sure grounds, in doing a thing, which, if not perfectly well founded, might have the appearance of being contrived on purpose to advance, or keep up the profits of the offices of the Masters. It explains his apprehension, that if I did not do it, it would not be done by my successor, unless the seal should come into the hands of a noble lord, whom he named. It shews, that what he pressed, was not so much for the Masters to give security, or to make up Dormer's deficiency, and retrieve the honour of the Court, as to have orders made, for the benefit of the Masters; which I thought ought to go together.

For it wanted no resolution in me, or in any other chancellor, to make orders upon the Masters, to secure the effects of the suitors in their hands; had that been the thing pressed, and especially if, as is pretended, they themselves desired it. But it might require resolution to support the Masters against the claims of an honourable person, with whom they then had a dispute.

This view of this matter will make your lordships consider it in a different light from what the Managers have endeavoured to set it in; and that my slowness did not proceed from my concern for the keeping up of the Masters' offices, but from my caution not to be too precipitate in advancing them.

And had I taken the measures desired, and made orders to prevent the Master of the Rolls from directing, in his decrees, the money to be brought before the Usher, and from referring irregularities to the six clerks; and to settle in their favour the other matters in dispute (though I will do them the justice to declare, that I do, so far as I have seen of it, think the Masters in the right therein) yet I am apprehensive, that at first sight it would have been matter of complaint against me, as a contrivance to advance the offices of the Masters; and that the schemes proposed by Mr. Lightboun for giving the security he represents as sufficient, would not have been thought a balance to it.

Having said this, give me leave to weigh the proposals.

And first, his proposals for providing for Dormer's deficiency.

The way of doing it, which he proposes, is this: having stated, in the first page of the letter, what he takes to have been the occasion of this great deficiency, he goes on, "which I hope may be provided for, and the credit of the Court retrieved and supported, by every Master advancing 2,000*l.* or such other sum as shall be agreed on, out of the cash of the Court in his hands; which being placed out at interest, the yearly income thereof, together with the produce of Mr. Dormer's estate, will answer the demands that may be expected on his successor, and will in due time make good the debt upon the office."

But as to this, I thought it both impracticable and insufficient, and I told him, and he very fairly owns it in his evidence, that I could not make an order of that kind; because it would indeed be ordering one man's money to be put out at interest, to pay another's debt.

His next proposal relates to the securities, lodged in the hands of the Masters, which he thought of the greatest consequence; because, as he now says, he told me that Dormer's accident came by trafficking with securities; which he inferred from a supposition that there was not then so much cash in his hands. This fact is contrary to the representation made as above to me, and the supposition, with respect to the quantity of cash, is obviated by his having just received a great sum out of the Exchequer. And your lordships have heard from the report to the lords of the committee of council, that the Masters have brought in all their securities; so that what Mr. Lightboun thought the greatest danger, has proved to be none at all.

However, to prevent that, which he thought the greatest danger, he proposes the taking all government securities for the future, in the names of two or more Masters; his words are in page the 2d, "Having before observed from whence this great deficiency arose, I submit it to your lordship, whether the taking all government securities for the future, in the name of two or more Masters, may not prevent the like misfortune hereafter."

He says now, that he proposed them to be

taken in the names of some Masters, and of a third person; but that is not mentioned in the letter, nor does Mr. Holford mention it in his evidence.

As to this proposal,' he has now sworn, as the truth is, that I started a difficulty upon that head, by objecting that this would not answer all cases, particularly with respect to the East-India and South Sea bonds, by reason that they are payable to the bearer. And his answer was, that there was no necessity of taking these securities; such might be taken as are transferable in the books of the companies.

On consulting others upon this, I found, that as to East India and South Sea bonds, wholly to disallow the taking those securities would be hard. Many people choose them, because there is little variation in the price, only sometimes a few shillings higher or lower; whereas in annuities, and much more in other stock, the fall of the price, by the time the money was to be paid out, might eat up the interest and more. That there would be a difficulty to dispose of those at that time in the hands of the Masters; probably the owners would not consent; it had been their choice, that had determined the laying out of the money upon those bonds; that to send them to the market all together would occasion a fall of the price, and a great loss, which would raise a clamour, and give great dissatisfaction.

I thought these several things had great weight, and deserved most serious consideration. I then thought of locking up these bonds in chests, with two locks, one to be kept by the Master, to whom they belonged, and the other by the next Master, after him, and to take the other securities in the name of two Masters.

But I was told by persons of great weight, that that was but two Masters instead of one, and would not be satisfactory: and should I join more of them, it would occasion more trouble, and possibly more charge; but they were still Masters.

At last I resolved to take the securities (other than the bonds) in the names of two Masters, and a third person to be named by the parties. But still I struck at the bonds, and was never set right in that, till it was too late. But I have now learned, which neither I nor Mr. Lightboun, as your lordships may observe by his evidence, had skill enough to know, that they might be indorsed to two Masters and a third person, and so the property be fixed in them; which, had I afterwards continued Chancellor, I was determined to have put in practice.

As to the cash, how that might be made secure, his whole proposal is contained in these words, in the second page: "The deposit to be put out at interest, to raise a fund for the payment of Mr. Dormer's debt, together with our office, would in a great measure be a security for the cash, with which we should then only be entrusted." By the deposit he means that of 2,000*l.* or such other sum as should be agreed upon, as I before read to your lordships.

This is the nature of his proposal, with relation to the security for the cash; which I apprehended must appear to be neither practicable, as I observed before, nor satisfactory. And had I built upon this, and made a regulation accordingly, I was very apprehensive those that were before dissatisfied, would call it trifling.

He then takes notice of the money being lodged with the Masters very effectually, though it is by way of answer to an objection, that every Master may not always have such a sum in his hand; to which he answers: "I will venture to say, it is scarce possible that can happen, if the money be directed as usual by your lordship and the Master of the Rolls." And then he adds (to shew the stress laid upon this) "without which the Masters cannot think themselves much interested in the event of Mr. Dormer's affair." And says in the 3d page: "If I have the happiness to have offered any thing thought practicable by your lordship, when I have the honour to be admitted to wait upon you, I hope to satisfy your lordship, that I shall with pleasure contribute, as becomes me, to facilitate any undertaking of this kind."

I think this proves what I said in the beginning; and I submit it to your lordships, whether I am criminal in not complying with these proposals.

My lords, I have told your lordships several thoughts I had about the securities. Give me leave to mention something of my thoughts, with relation to the cash.

I thought to take a small security would only shew that I was convinced that a security was necessary, and yet trifled in it; and those that were willing to find fault, would say, it was done only to amuse the suitors, and lull them into a false security.

And till I could adjust the matter of the securities lodged with them, particularly the East India and South Sea bonds, no security, that it would be practicable for the Masters to give, would bear any proportion to what was in their hands, when it should be 50, 60 or 80,000*l.*

But if I could contrive to make all the securities safe, and reduce the cash into a narrower compass, by making orders for putting out the money of course, whenever, through neglect of the parties, or otherwise, it should happen to lie beyond such a time; then a security might be given by the Masters to answer it.

But, as I told your lordships, the East India and South Sea bonds were too hard for me, till the matter was before the committee of council; and had the Masters behaved themselves, as I expected they would in the matter of their accounts, I then intended to have laid my thoughts before the council, and to have had their authority and sanction for putting them in practice.

The other proposal supposed to be made to me, is spoke to by Mr. Kynaston, and him only. And though he says all, or most of the Masters agreed to it, and thereupon he waited upon me

about it; I do not find that any of the rest know any thing of it. I observed, that neither Mr. Lightboun nor Mr. Holford (both produced to this Article) are examined to this great matter, upon which the Masters are said to be agreed; nor is any other Master called to it, though his account of it is so very imperfect, and stands in need of being explained, as well as supported. As to the securities, it reaches not all; the bonds are left under the same difficulty as before. And as to the cash, he mentions no sum or value in which the security was to be given.

But, my lords, upon the whole, both from what Mr. Kynaston and Mr. Lightboun say, it is plain, they were consulting their own interest; to keep the office free from incumbrances: and their interest and mine (if I could have any in view) was the same: so that if it was their proposal, what should hinder me from agreeing to it, but that I thought it insufficient?

The third thing charged in this Article is, that I did not take the Masters' accounts, that is, accounts of what effects of the suitors they had in their hands.

My lords, it is true, this was proved to be done by my lord Cowper at his entrance into his office, both the first and second time; it was done by another noble lord, as has been proved at your lordships' bar, once, and I believe it was done by that lord oftener.

My lords, had I taken their accounts too, I doubt in me it would not have had the same approbation, as it had in those noble lords. In my case it would have been asked, what care I had taken to be sure that the accounts delivered me by the Masters were true? whether I had seen the securities and cash? and what satisfaction I had, that they were able to make them good? I should, perhaps, have been told, that without that, the bare taking of an account was of no use. And these enquiries were of such a nature, that if they were to be pursued effectually and with exactness, I own I had not strength to go through them.

Nor did I think the taking accounts from the Masters necessary, because I do still take the liberty to say, I was fully persuaded, all the Masters were good and honest men; and if they were not, I do not see it would be of any use to take such accounts. For I would be glad to know, whether if I had taken an account yearly from every Master, he would have been one halfpenny richer or poorer, or at all more able to pay the suitors?

Obj. It is said, indeed, that all these were wilful omissions; and for fear the price of places should be sunk.

Resp. But of that there is not the least proof, and the circumstances of the case above set forth, I hope, give a much more natural account of it. And the difficulty what to do in such a case cannot be expressed by any words I can make use of, so strongly as by what has passed, since I ordered the money and effects to be locked up, and lodged at the Bank, which were intended (and so the Order of the 17th Decem. expresses it) to continue there only till the affair could be more maturely considered, and a proper provision made for the security of the suitors. Five months are now elapsed, and nothing has been yet done: though the suitors suffer vast inconvenience. For, in order to get any money from thence, there must be a Master, and a Six-Clerk, and two Directors, and a certificate from the Register, which occasions so great an expence, that, in the case of small sums, people do not think it worth their while to go for them to the Bank, but choose to be without their interest, rather than come at it through so many difficulties. And if the lords commissioners, three of them, such great men, have found this matter too difficult to settle to their satisfaction; is it a crime in me, that I was not able to discover a method for making things easy and secure?

This Article is closed with the great deficiencies that have happened with regard to the effects of the suitors.

But, my lords, give me leave to say, if that deficiency have not happened by any fault of mine; if those misfortunes, which have befallen some of the Masters, be not owing to any crime in me; no part of all that is charged in this Article, ought in justice to lie at my door. As I have observed before, the great danger, which was at first apprehended, and so often talked of by Mr. Lightboun, related only to the securities, which the Masters had in their hands; but that which happened related to the money only. And though this accident fell out, whilst I had the great seal, yet it might as well have happened in my predecessor's time, since nothing that I have done has given the least occasion to it.

But is there, at last, any deficiency made out to be in these Masters, by which the suitors are to be sufferers?

Mr. Thompson has been called as a witness to prove these deficiencies; but he has only shewn an estimate of Borret's deficiency, and that some of the present Masters had not paid in their balances at such a time; and how much the farther sums they were to pay amounted to.

But have the suitors therefore lost the money? No, my lords, that does not appear; but on the contrary,

Mr. Conway, one of them, whom they have themselves produced as a witness, has sworn, that he has assigned an estate sufficient to pay all his deficiency.

One of the Managers was pleased to own that he meant by deficiencies, the money not yet paid in, nay the money not paid in at the time of making the orders ready; and did admit, that since those orders, there had been satisfaction or security for the most part.

But, my lords, it is the loss of the suitors, that alone can give ground to complain.

The order concerning Mr. Thomas Bennet mentions his deficiency to be only 7,500*l.* and 1,575*l.* represented by him to be in the hands of his predecessor and me.

The latter sum of 1,575*l.* is brought into court. And we have shewn that Mr. Hiccocks, his predecessor, has petitioned, that he may pay in the 7,500*l.* which is the whole deficiency. And here appears a considerable estate, of I think 750*l.* per annum of Mr. Bennet's besides.

Mr. Kynaston's deficiency is represented to have been before Christmas 26,908*l.* 11*s.* 3½*d.*; arising all, but what he said was in my hands, and the hands of Mr. Rogers his predecessor, only hence, that his cashier was dead intestate, and administration disputed; and so he could not come at the money.

	£.	s.	d.
There is paid in by me - - -	1,575	0	0
There is offered to be paid by Mr. Rogers, and will be paid -	6,000	0	0
A Debt from Mr. Delahay, which he swears a just one, is assigned - - - - - - - -	20,850	0	0
In all -	28,425	0	0
And the Deficiency being computed at - - - - - - -	26,908	11	3½
This exceeds it in the sum of £.	1,516	0	0

And he has an estate of between 4 and 500*l.* a year, and timber of the value of 2,500*l.* to make good any part that may not be got from Delahay's estate, though his effects are in one of the reports mentioned to have been then found to be in London alone above 20,000*l.* And I have heard that the lords commissioners have ordered them to be brought into Chancery, and that 16 or 18,000*l.* are actually brought in.

What is said to be Mr. Borret's deficiency, is the foot of an account, which the Report that represents it, and Mr. Thompson in his evidence, say could not be properly taken.

And when fully examined into, there may come out to be no loss there neither. Mr. Godfrey swears Mr. Borret to have been in good circumstances when admitted; to have an estate; to have sold an office for, I think, 5,000*l.* upon the occasion of his coming in Master; to have lived with small expence, his wife's father maintaining his family. And, as he enjoyed the office four years, there can be no great deficiency, and probably will be none at all.

But, my lords, it is extremely hard upon me, if by their producing an uncertain estimate, I am to be obliged to state the accounts of one, who is dead, whose administrator is solicitor against me, without their searching into his papers and affairs, and giving a perfect account how they stand. It is exceeding hard, give me leave to say, that your lordships should be judging upon me as criminal, from facts of this kind, to which I am an entire stranger, when there is nothing like proof, that there will be a farthing deficiency at last, but only that the money is not yet come in.

I beg leave to observe one thing more, that the Masters, that are now called the deficient Masters, are not one of them in custody; though it is made an Article against me, that I did not commit Mr. Dormer, who was in Holland. Therefore, since they are at liberty, it must be taken for granted, that the lords commissioners had good reason not to commit them; and yet their deficiency, which is not a crime in them, sufficient to justify the committing them, is to be made a crime in me, sufficient to suport a charge of High Crimes and Misdemeanors. Your lordships see how far this ought to affect me; and I submit, upon what I have said, whether it can support the Charge in this Article.

As to the 19th Article, which relates to what was done about taking the accounts: It charges,

"That whereas his most sacred majesty, out of his fatherly goodness to his people, did, in or about the month of November last, direct an enquiry to be made into the accounts of the Masters of the said Court of Chancery, to the intent that proper methods might be taken for the security of the suitors of the said Court; the said Thomas earl of Macclesfield, being then Lord Chancellor of Great Britain, and one of his majesty's most honourable privy council, in order to obstruct the same, and to prevent a parliamentary enquiry into the state and condition of the offices of the said Masters, in breach of the several great trusts reposed in him, did give advice and encouragement to the said Masters to assist and supply each other with money and effects, and did represent to the said Masters, that it would be for their honour and service, to appear able and sufficient; and that if they made a bold stand now, it might prevent a parliamentary enquiry, or to that effect; and did persuade several of them to make false representations of their circumstances to his majesty, by adding a subscription to their respective accounts delivered to the said Earl, to be laid before his majesty, to the effect following, viz. That they were able to answer the money and securities in their hands, and were willing to pay the same to such persons as were entitled thereunto; although the said Earl knew, or had good reason to believe, that several of the Masters were not then able to answer the balance of their accounts, nor are they yet able to satisfy or make good the same; and when the said Masters were afterwards required to produce the cash and effects of the suitors in their hands, some of the Masters, according to such advice and encouragement given by the said Earl, did supply others of them with cash and effects, to make a false shew and appearance of their ability and readiness to answer the balance of their accounts."

My lords, the two things, which are made the heads of the Charge in this Article, relate to the subscriptions of some of the Masters written under their accounts; that they were able to make good the balances; and their afterwards producing cash, to make a false shew

and appearance of their ability. As to the first; I take it, that the material part of the Charge is, that I persuaded them to make false representations of their circumstances by a subscription which I knew, or had good reason to believe, was false.

As there is not the least proof offered that I knew or had reason to believe the subscription false, this Charge I think entirely falls to the ground.

Upon the proof attempted to be made, I think it appears, that when Mr. Holford brought in his account, pursuant to my order, he (without my knowing any thing of it) had wrote a subscription at the end of it, to this effect: "I have all these securities standing in my name, as in this account is specified, and will procure certificates from the proper offices, that I have and had them before this account, if your lordship require it; and as to the money, I am ready to give your lordship satisfaction to a demonstration, that I have it in my power to answer it to every person, that shall appear to be entitled to it, and who can give me a legal discharge."

They say, I read it, and spoke of it with approbation.

There were only part of the Masters ready with their accounts; and Mr. Lovibond was the next, that delivered me his, and he had wrote to the same effect in substance; only as to the cash, he wrote that he was ready to give security.

My lords, every body knows that he was able to answer it; and he swears he had it ready; and was able to have paid it the next day; and he appears to have lent 10,000*l.* to a brother Master on that occasion. I was therefore surprized to see him make use of an expression, which looked as if he were not able to pay the money. And upon that it was that he says I recommended to him to make use of the same expression, as had already been used by Mr. Holford; and so accordingly he did.

Thomas Bennet had subscribed before he came thus: "I have all the securities standing in my name as in the within account are specified, as also the tallies, orders, and bonds in my custody:" but had said nothing of the money: he swears, that I said I wished all would make use of the same form as Mr. Holford had done: and that it would be for their honour and service to appear able and sufficient. He says, that Mr. Lightboun, as I remember, asked what was the meaning of bringing it before the committee? and that I said, it would be a means to prevent a parliamentary enquiry; that I did not ask him whether he was able, but directed him to write; I suppose he means by the general direction; for I do not apprehend he says, that I spoke it to him in particular: and it is not pretended, that he made the least scruple of signing it as true, or expressed any backwardness in it; and he in effect owns he did not. But he informs your lordships how extremely tender he was, not to write any thing but what was strictly true; and that therefore, in his subscription, he took care to leave out the words "to a demonstration," which are in Mr. Holford's. And Mr. Holford's subscription running, "And as to the money, I am ready to give your lordship satisfaction to a demonstration, that I have it in my power to answer it to every person that shall appear to be entitled to it," &c. Mr. Bennet could not come quite up to this; but he subscribes, "And as to the money, I am ready to give your lordship satisfaction, that I am able to answer it to every person that is entitled thereto." This, therefore, that he has subscribed, is, I suppose, if he is to be credited, exactly true: and if so, I have not persuaded him to make a false subscription.

Mr. Kynaston says, it was recommended to them by me, to make such a subscription as Mr. Holford's; that I said, it would look well to the council, and prevent farther enquiry or parliamentary enquiry, or some other enquiry, he knows not which; so he complied. But, my lords, his subscription is not what I recommended. Mr. Holford only undertakes to shew he had it in his power to answer the money, &c. that is, that he either had the money or effects, which being disposed of, would raise it. But Mr. Kynaston goes farther, he says, I am ready to pay it to the persons entitled.

Mr. Lightboun heard nothing spoken of the subscription; he went away to finish his accounts, which were not complete.

Mr. John Bennet was not there; but at his coming, being told what I have said to the others, he, without scruple, subscribed without my speaking to him.

Mr. Edwards says he was able to pay it.

Mr. Lovibond was called last; but I before gave an account what he said.

So that of the six Masters who made subscriptions, I spoke only to five.

Three of them have proved themselves able; and I believe nobody doubts it.

Mr. Thomas Bennet made no objection or difficulty, and has been curious not to let his exceed the truth.

Mr. Kynaston has voluntarily gone beyond what I desired. And I make no question but he thought himself able to answer it, though I doubt his being ready.

But is there the least evidence offered, that I knew Mr. Kynaston and Mr. Thomas Bennet were not able, or had reason to believe or suspect it? No; on the contrary, Mr. Lovibond, their own witness, who is one of the Masters, and conversant among them, told your lordships upon his oath, that by their conversation he believed they were able to make good their accounts.

In the mean time, your lordships observe, that these deficient Masters had all their securities ready, and voluntarily subscribed so to their accounts, without my speaking to them. In which point Mr. Lightboun, under the last Article, thought there was the most danger.

As to the words, "That it would be for

their honour or service to appear able and sufficient;"

I will not be positive as to the words, whether it were "to appear able," &c. or "to make it appear that they were able," &c. In a fair construction, the sense of the first is the same as the latter.

When Mr. Holford subscribes, that he is able to pay to every person, who shall appear to be entitled; or, if I should say, Mr. Thomas Bennet appears not so fair or able a man as I formerly thought him; does it import only a false shew?

As for what is said of "preventing a parliamentary enquiry;"

Mr. Thomas Bennet represents it to be spoke in answer to the question, what was the meaning of bringing it before the committee? And says, my answer was, That it would prevent a parliamentary enquiry.

If I said it, the reason is obvious, and the thing innocent.

It is notorious, that the last summer there was a great clamour against Masters in Chancery, which was heightened by some disputes they caused in the Court of Chancery; that it was generally believed that it would come into parliament; and I am persuaded it would have come into parliament something sooner, if the committee of council had not taken this matter into consideration.

I am likewise persuaded, that had the Masters all been able to make good the money in their hands, and proved that they were so; and that they had behaved themselves well; and that the lords of the committee, after finding their accounts right, had proceeded to advise proper regulations, the matter would never have come into parliament with respect to them, whatever it might as to me.

And as to them, I believe they were not desirous to have the matter in parliament, because of the vast trouble it must give them, had there been nothing else in it. And it was natural for me to think, that nothing would more tend to make them easy, in complying with what the committee should think fit, than by letting them know, that if it gave them trouble in one respect, it would ease them more in another.

And so far I thought it for the king's service, and my duty, to hasten the accounts before the council, and to use all means I could to have things carried on with speed and effect; that such members of parliament as had their eyes on this affair, might plainly see that proper measures were effectually carrying on by the lords; so that there would be no occasion to take up this affair in parliament, or for the legislature to interpose.

But as to my own share, I freely own I had not the least apprehension of what has since befallen me.

I was so far from obstructing the taking these accounts, that Mr. Holford has informed your lordships, that when the first order was such as would require a very long time to be complied with, I pressed them not to make use of that as an excuse for delay, but to bring in an account of their present balances, and to let the lords know the reason, and then to ask time for more perfect accounts, if such should be required, which were not.

As to their making a false shew of cash pursuant to my advice and encouragement:

They have not offered a word of proof of any thing said or done by me, or by my order, concerning any part of that whole affair; if they had, I am sure whatever had appeared to be done by me, would at the same time have appeared not capable of the construction in the Article.

But instead of that, they have given a confused uncertain account of something that passed between Mr. Cottingham and the Masters; but never called Mr. Cottingham to bring it home to me, nor any way shewn that I knew any thing of it, either before or after. Nor do I really understand it at last. I do not apprehend that Mr. Cottingham advised them to furnish one another with money, but upon good security; nor did they do it. Nor do I see what harm it is, if a Master, having occasion for money, borrows it of another Master upon good security.

The only person that they seem to fix any fraud upon, is Mr. Conway; and, which appears very odd, only by his own evidence; and yet he seems to justify himself too.

But if not, there is no proof nor ground of supposition that I was any way privy to it, or assisting in it, or that I had any the least share whatsoever in it.

And therefore I am not guilty.

On the 20th and 21st nothing has been offered.

My lords, I have now gone through all the several Articles that have been endeavoured to be supported against me; and I think I may say as I did in the beginning, that except those relating to the disposal of places, which are of another kind and another consideration, all the rest must, to be made criminal, turn upon that aggravation in the Articles, "from my inordinate, wicked and corrupt designs of procuring to myself excessive and exorbitant gains and profits by divers unjust and oppressive practices after mentioned."

It is such a corrupt heart only can change actions, that in themselves are innocent, and some of them perhaps commendable, into so many crimes.

And yet it is very extraordinary, and scarce possible to be conceived, but that if there had been such a corrupt heart, it must have broke out upon some other occasion of my life. Not one instance of my whole life has been yet produced to shew it.

Several of those under me have been examined; several officers immediately attendant on me, that received considerable profits and salaries, to the amount of 3 or 4,000*l.* per annum, and more; if I had set my heart upon gain, a certain profit might have been there

rearly made, amongst those whom I had wholly at mercy, and in private. But there has no appearance been found of any thing of that kind: And is it not more likely that I should have laid hold of a certain profit, than be laying schemes for advantages upon the uncertain contingency of the sales of Masters offices?

The value of such an expectation is a mere trifle; and with respect to the probability of its happening, it was exceeding uncertain, whether I should have an opportunity of putting in one single Master.

Three Masters have happened to die in my time; and two of those in less than the space of a year: But I think not one in nine years before.

My lord Cowper admitted but one in the last time of his being Chancellor, which was four years; and that was upon a surrender.

There are 24 cursitors; only one has died in my time: 30 commissioners of bankrupts; only one died in above six years.

Surrenders of the offices of Masters are rarely till after 16 or 17 years, sometimes 30 or 40 years enjoyment.

My life was very uncertain: The office of Chancellor much more so.

Little therefore was to be hoped from the profit to be made by Masters' places.

My lords, in the next place I apprehend, that it appears I did not take the advantage I might have taken.

When the time came for me to reap the fruit of all my contrivances, all those schemes and stratagems, the work of above three years, (a great space in the time of a Chancellor) see, whether there be the least mark or symptom of this impotent desire of gain!

What I did, proves beyond all contradiction, that I never had any such views as these they lay to my charge.

I took not the advantage I might have done; I took a less sum, when a greater was offered; and part of the money was returned again to Mr. Elde and Mr. Thurston. And when Mr. Thurston's money was returned, only for being more than it was expected to be, every thing was in the same state as when it was paid.

And possibly your lordships will think, from some other evidence given, that amassing a great estate was never my view; and that rapacious and base ways of getting money are not consistent with my way of laying it out.

As this is a full answer to the charge of my desire of gain; and the whole malignity of all I am charged with arises from that supposed principle of my actions; without this, though there should have been imprudence, indolence, too great confidence, perhaps credulity, irresolution, or any other defect or weakness, there has been nothing wicked.

And, if your lordships are satisfied of this one thing, I apprehend the sting of this impeachment is taken out.

My lords, having thus gone through all my observations, it may possibly be expected I should close them with offering something in general: But I think it properer to forbear.

I am not conscious to myself, that it is necessary in this case to apply to the passions; which is a common artifice to assist a weak defence. If I have done any public or private good (of which last some specimen has been laid before your lordships) it will, I am confident, have its full weight.

I submit my whole life and conduct to your lordships' judgment; and rely entirely upon your justice for my acquittal.

Mr. *Plummer*. My lords, I am not going to make any observations upon this speech; neither did I interrupt the lord in making it. But one thing I am to say for form sake. We produced to your lordships a copy of a letter writ from Mr. Lightboun to my lord, he hath now read the original letter; I desire that the original may be delivered into court, that we may have the perusal of it.

E. of *Macc.* I believe the gentleman is perfectly in the right of it. It is here.

[The House adjourned to Friday morning next, at ten o'clock.]

The Tenth Day.

Friday, May 21.

The Lords being seated in their House, the serjeant at arms made proclamation for silence: As also the other proclamation; That all persons concerned were to take notice, that Thomas earl of Macclesfield now stood upon his trial, and they might come forth in order to make good the Charge.

L. C. J. *King*. Gentlemen of the House of Commons, you may proceed.

Serj. *Pengelly*. My lords, the part assigned to me in this Impeachment against the earl of Macclesfield, is to reply to his Defence upon the Fifth, Sixth, Seventh, Eighth, Ninth, Eleventh, and Twelfth Articles.

Before I enter into the particular examination of the objections made against the Charge of the Commons contained in these Articles, and of the matters alleged, either in justification, or excuse of the lord impeached: I shall take the liberty of observing,

That your lordships are now exercising a power of judicature, reserved in the original frame of the English constitution, for the punishment of offences of a public nature, which may affect the nation; as well in instances, where the inferior courts have no power to punish the crimes committed by the ordinary rules of justice; as in cases within the jurisdiction of the courts of Westminster-hall, where the person offending is, by his degree, raised above the apprehension of danger, from a prosecution carried on in the more usual course of justice; and whose exalted station requires the united accusation of all the Commons of Great Britain, by their representatives in parliament.

This high jurisdiction may be exercised for the preservation of the rights of the Lords and Commons, against the attempts of powerful evil ministers, who depend upon the favour of the crown;

Or, it may be put in execution for the ease and relief of a good prince, whose honour has been betrayed by a corrupt servant; and yet, whose clemency makes him unwilling to punish; so that it becomes necessary for his faithful Commons to take into their care the prosecution of such an offender.

Former reigns have supplied your Journals with many examples of the first kind.

The present reign produces an instance of the latter sort, wherein the Commons bring before your lordships in judgment a peer offending, with the greatest ingratitude, against a most just, and most merciful sovereign.

For, the king's royal munificence bestowed upon this Earl, in the most abundant measure, could not exempt the inferior officers from his exactions, nor protect the suitors and their properties in the king's own Court of Chancery.

The general crime charged upon the Earl, in five of these Articles, is extortion by colour of his authority as Lord Chancellor.

The offence alleged in the other two Articles, is gross and wilful negligence in his office, to the great damage and loss of the suitors of the Court, but to his own private gain and advantage.

The particular exactions are his taking 105*l.* from Mr. Thomas Bennet, for accepting the resignation of the office of Clerk of the Custodies in the Court of Chancery, in order to obtain a new grant to Mr. Hugh Hamersley, and procuring the same to pass the great seal accordingly.

His exacting 1,500 guineas from Mr. Kynaston, for the admitting him to be a Master of the Court of Chancery, upon the resignation of Mr. Rogers.

His exacting the like sum of 1,500 guineas from Mr. Thomas Bennet, for the admitting him to be a Master of the same Court, upon the surrender of Mr. Hiococks.

His exacting the sum of 5,000 guineas from Mr. Elde, for the admitting him to be a Master of the same Court, upon the death of Mr. Fellowes.

His exacting the like sum of 5,000 guineas from Mr. Thurston, for the admitting him to be a Master of the same Court, upon the death of Mr. Borret.

The last Article relating to Mr. Thurston is charged with this aggravation, that the former Master was dead insolvent, greatly indebted to the suitors of the Court; and that the Earl did not secure a just satisfaction to the suitors.

And the exaction of the 105*l.* from Mr. Tho. Bennet, is alleged to be done when the Earl was one of the lords justices.

These misdemeanors, as well as all the other offences, of which the Earl is now accused, were committed by him whilst he executed the office of Lord Chancellor.

From whence the Earl and his counsel take occasion to make a triumph upon the supposed justice and regularity of his administration and conduct, when he presided in the Court of King's bench: because the Commons have not produced any misbehaviour in the execution of that office wherewith to furnish out an Article against him.

This may be an instance of the lenity of the Commons, but it is no proof of the Earl's innocence; who best knowing his own behaviour, declines to abide the examination of his actions during the six years of his continuance in the office of Lord Chancellor;

But flies to a sanctuary for indemnity and discharge; which shews, that the Earl esteemed himself more secure under shelter, than upon a justification of his conduct.

And the success of the Commons, in the very strong and full evidence, which they have laid before your lordships in maintenance of those Articles upon which they have proceeded, leaves very little reason to imagine that they would have failed in their proof, if they had extended their inquiry into his former life, or had entered into the rest of the Articles.

And after the strict and long examination of witnesses, which has entertained your lordships for so many days, I may venture to say, that the consistency and uniformity of the proof given in support of the accusation of the Commons, upon so many different heads, are sufficient to convince all the world of the necessity which there was, for the honour of the king, and the welfare and satisfaction of the nation, to carry on the present prosecution;

And, I hope, have, already fully satisfied your lordships of the truth and justice of the Commons' Impeachment.

But as there have been several objections made on the behalf of the Earl impeached, as well to the foundation of the Charge itself, and to the event and consequence of it, as to the sufficiency of the evidence of the facts alleged; it will be necessary for me to give an answer to these objections, and to maintain the Charge in these respects; which I shall proceed to do by shewing, that the impeachment is well founded, and that the facts in the Articles before stated have been plainly and fully proved.

The Earl himself began with insisting, that his general oath of office has no relation to the offences charged; and that no inference can be made to his prejudice from the tenor of that oath.

But the Earl's remembrance, or explanation of his oath, is very defective; he has set it out at large in his Answer, and thereby he sweare, that "He will well and truly serve the king, and his people in the office of Chancellor, and do right after the laws and usages of this realm;" which comprehends the observation of every thing, which is part of the duty of, or incident to his office,

And the avoiding of every illegal and unjust action in the execution of it.

And the omission of any part of his duty, or

the commission of any offence against the duty of his office, is a breach of this oath of office, although the particulars are not enumerated in the oath; and the contrary opinion will open a door to the commission of all manner of injustice and rapine by civil officers.

The Earl likewise relies upon it, that the whole Charge turns upon his wicked and corrupt intent and views alleged in the introduction, which (as he says) have not been made appear;

But these will be apparent from the proof of the several facts charged; which, if they are unlawful and unwarrantable, and do tend to the raising money by corrupt and extensive measures, will manifest that intent, and prove it as strongly as if he had declared his designs in open Court; for such acts cannot be done with a good and honest intention.

The main objection against the Article is that there is no matter of a criminal nature contained in the money Articles; or if there is a crime, yet that there is no punishment annexed as incident to it, which your lordships can now inflict upon the Earl, after he is removed from his office.

In answer to which I shall insist, that,

The Earl's selling these offices, or disposing of them for money taken by him before the admission of the succeeding officers in the manner alleged and proved, is an offence at the common law, and punishable by fine and imprisonment, upon indictment or information; as well where the money was taken for an admission upon a resignation, as upon a death.

To make out this, it must be considered, that

The king having the executive power, or the administration of ordinary justice, lodged in him, is in consequence obliged to provide and appoint capable and sufficient officers, necessary for the due execution of justice, in his several Courts, for the benefit of his subjects: his coronation oath proves this.

And accordingly the crown has always paid the salaries or fees of the Lord Chancellor, and other principal officers of justice, and also of many inferior ministers, out of the royal revenue; and other subordinate ministers were maintained by the chief officer, to the end that the subject should not be exposed to exaction or oppression, under pretence of any demand of or reward by the ministers of public justice for the execution of their offices; which is the source of all that corruption, which at any time springs up in the courts of justice.

The ancient law of England was, that none having any office concerning the administration of justice, should take any fee or reward of any subject for the doing of his office, to the end he might be free and at liberty to do justice. [Stat. Westm. 1. cap. 10. A. 3. Ed. 1, Co. 2. Inst. 176, 209, 210. Co. 3 Inst. 148. 147, 148.]

And several charters of former kings, and statutes declaratory of the common law in that respect, have been made to inforce the due observation thereof, as,

Stat. Westm. 1. 3 Ed. 1. c. 26. 20 Ed. 3, c. 1.

My lord Coke, 3 Inst. 146, says, the 20 Ed. 3, c. 1, is only a commandment of the king; and that there is no record of any such act in any parliament roll, and yet necessary to be printed, because the 4th chapter of this parliament refers to the pains contained in it. [Co. 3 Inst. 74, 176, 209, 210.]

Yet, if it be only the king's charter, it is a declaration of the common law at that time; but it is printed in old Rastal's edition of Statutes, fol. 89, and in all the rest of the printed statutes. [Co. 3 Inst. 224, 225. Co. 3 Inst. 146, cap. 68, of Bribery, Extortion, &c.]

20 Ed. 3, cap. 6, and more particularly the act of 11 H. 4. Rot. parl. num. 28, by which it is enacted,

"Item, Que null Chanceller, Tresorer, Gardein de Prive Seal, Counseller du Roy,* serementez a Counseil du Roy, ne null autre officer, Judge, ne Ministre du Roy, prenant Fees ou Gages de Roy, pur lour ditz Offices ou Services preigne en null Menere en Temps avenir ascun Manere de Done ou Brocage de nully pour lour ditz Offices et Services, a faire sur Peyn de respondre a Roy de la Treble de ceo que issi preignont, et de satisfier la Partie et punys al Voluntes de Roy, et soit dischargez de son Office, Service, et Counseil pur toutz jours, &c."

"Item, That no Chancellor" (this high officer is mentioned in the first place by name) "treasurer, keeper of the privy seal, counsellor of the king,* sworn of the king's council, nor no other officer, judge, nor minister of the king, receiving fees or wages of the king for the said offices or services, take in no manner in time to come, any manner of gift or brocage of any person for doing their said offices and services, upon pain to answer to the king the treble of what they so take, and to satisfy the party, and to be punished at the king's pleasure, and shall be discharged from his office, service, and counsel for ever," &c.

This statute is entered on the parliament roll of that year, amongst the records in the Tower; it is not indeed entered on the statute roll: but the parliament roll is the original, and is the warrant for the statute roll, and is therefore of greater authority.

In the margin of the roll is entered thus, viz. "Respectuatur per Dominum Principem et Consilium."

For which reason my lord Coke says it was never printed in the book of statutes, of which he highly complains; and therefore has recited it at large, and caused it to be printed in his 3d Inst. fol. 146, c. 68, of Bribery, Extortion, &c. and c. 101, of Judgments and Executions, fol. 224, 225, which is one of the first books relating to the crown law, read by the students of the law, and was thus published by that great man, to impress an early abhorrence of every

* N. B. The printed books have mistaken this word.

thing which may tend to exaction and extortion; and must have often come under the consideration of the impeached lord.

These statutes have indeed been opened, and altered by subsequent statutes, as to several inferior officers; and some small fees have been anciently allowed, and permitted in particular cases; but it has been observed, [Co. 2 Inst. 74, 209, 210.] that from such indulgences many oppressions of the people have ensued.

But the common law and the several acts of parliament before-mentioned, do not only still remain in force, with respect to the Lord Chancellor, but have been confirmed and enforceed by other statutes.

And the great charter of our liberties, Magna Charta, c. 29, Co. 2 Inst. 55, 56, does imply this, "Nulli vendemus Justitiam aut Rectum;" which, according to my lord Coke's comment, is spoken in the person of the king, who in law is present in his own courts of justice, and repeating these words, which (says he) extend to the end, which is justice, and to the mean, whereby justice may be attained, which is the law; or, as it must be understood, the administration of the law by the officers of justice; unless it can be supposed, that the statute provides against the lesser evil, but allows the greater mischief; that it prohibits the sale of a particular decree or order, which may be right and just in itself;

But leaves the king's superior officer at liberty to sell the whole body of the suitors of the Court in the gross, to the exaction and oppression of the under officers, in the fees which they shall demand against law and right.

So that if the Earl impeached had exemplified this rule of my lord Coke in the Court of Chancery, where he immediately represented the king's royal person; and once in a term sitting in Court between his Masters, who paid for their places out of the suitors' effects, had repeated to the suitors this glorious declaration, "Nulli vendemus Justitiam;" he must have made a very inconsistent figure, in the opinion of the meanest capacity.

It will then be plain, that as to such offices, which are in the immediate gift and disposal of the crown, they cannot in their own nature be saleable or disposed of for money; because the king himself cannot be supposed to suffer them to be put to sale.

And the ministers of the crown, who have no immediate right in the office, and are only to execute and confirm the king's pleasure in the disposal of the office, cannot sell that which is not their own; nor ought, nor can they lawfully take any fee or reward, for accepting resignations, or making new grants, or admissions into places, or for conferring inferior offices, with which they are entrusted by virtue of their own office; which would be the taking money for the doing of their office, contrary to the law, and the before-mentioned statute.

But there is another very good act of parliament, which has been read at your lordships' table, and proves this practice of selling such offices, to be an offence at the common law, viz.

12 Rich. 2, c. 2, entitled, "None shall obtain offices by suit or for reward." [Co. 1 Inst. 134, a. Co. 3 Inst. 145, 147, 148.]

"Item, it is accorded, that the Chancellor" (by express name) "treasurer, keeper of the privy seal, steward of the king's house, the king's chamberlain, clerk of the rolls; the justices of the one bench, and of the other; barons of the Exchequer, and all other that shall be called to ordain, name, or make justices of the peace, sheriffs, escheators, customers, comptrollers, or any other officer or minister of the king, shall be firmly sworn, that they shall not ordain, name, or make any such officers, nor other officer or minister of the king for any gift or brocage, favour or affection."

The act proceeds farther in a different form of expression, and to another matter:

"Nor, that none which pursueth by him, or any other, privily or openly, to be in any manner of office, shall be put in the same office, or any other; but that they make all such officers and ministers of the best and most lawful men."

The Earl apprehended the stress of this statute, and how much it pressed upon him; and therefore has endeavoured to distinguish himself, not only out of the oath, but out of the entire act, by objecting, that this statute, and the oath therein directed, only extend to such nominations as are made in the nature of elections, by an assembly of all these great officers and ministers, when they are called together for that end; which word 'together' is of his own inserting, to serve his purpose; as in the case of sheriffs, and not to their single and separate nomination of officers, in right of their respective offices by themselves.

This is the Earl's own objection, and not of his counsel, and will (if allowed) expound away the whole act, in all the express instances mentioned in the statute, save one;

For there is but one officer named in the act, who is nominated thus in an assembly or public meeting, which is sheriff; and all the rest are ordained, and made by the great officers separately, in their own right; as justices of peace by the chancellor; and escheators, customers and comptrollers, by the lord treasurer.

And the rest of the words of the act, viz. "Or any other officer or minister of the king," will be totally expunged by this nice interpretation.

But the words plainly mean, that every one of these officers, who by virtue of his office, shall be called (not called together) by command of the crown, or in execution of his office, to name or make any inferior officer, shall be sworn; for they never are all called together, unless on the nomination of sheriffs.

The Earl, for more security, and for the sake of better company, objects farther; that the argument from this act and the oath will go too far; for then they are sworn not to prefer any who make suit or application for any office,

But that is no part of the oath; and they are only sworn so far as the statute extends it, which is to the former part; and this clause in the conclusion of the act is only directory, and introduces a new instruction to the great officers, but does not carry on the purport of the oath; for the words are, "It is accorded that the chancellor," &c. (in the affirmative) "shall be sworn, that they shall not name," &c. and the sentence which follows is a new clause, beginning with a negative, viz. "Nor, that none which pursueth, &c. shall be put into any office," &c. and refers to the person applying, and not to the officer appointing.

So that this latter part of the statute ought to be observed; but the officer is not required to be sworn to the observation of it.

This statute takes it for granted, that the contrary practice of naming subordinate officers for gift or brocage was unlawful before, at the common law; since it does not create or enact it to be an offence, but provides an additional constraint or obligation upon the superior officer by an oath, not to commit the offence; and it still remains an offence at the common law, and don't depend on that statute, but is a great offence, although the oath be not taken.

This statute contains the most extensive and general words, and mentions officers of many sorts, and different degrees, as well high as low, relating to the peace, public justice, and the revenue; and that no officer, of any kind whatsoever, in the king's service, named or ordained by the great officers of state, might escape or be omitted, the act concludes the description with these words, "Or any other officer or minister of the king;"

And therein manifestly comprehends both these offices of Clerk of the Custodies, and of Masters in Chancery:

For this statute refers to officers who are only named or recommended to the king by the chancellor, &c. and yet are constituted by the king's letters patents, as justices of the peace, and sheriffs, whereby the usurped fee for recommendation is declared illegal; and also to other officers, who are immediately constituted and appointed by the chief officers, by authority derived from the king, and by virtue of the trust in them reposed for the king's honour and service, and for the benefit of his people, as escheators and others; and thereby the other pretended fee for nomination is condemned.

Sheriffs and escheators named in the act, are officers relating to the administration and execution of justice; and escheators more especially, to inquisitions touching ideots and lunatics, and the commissions and proceedings thereon; which is the chief part of the trust and office granted by the letters patents to Mr. Hamersley, as Clerk of the Custodies, and which was resigned by Mr. Tho. Bennet; and it will appear by the patent itself, that this office in the Court of Chancery, has a very near relation to the office of escheator; and the grant very fully describes the nature and antiquity of this office.

And as to the nature and antiquity of the offices of Masters in Chancery, they appear fully from the oath taken by every Master upon his admission, which is of the same import and effect, in many things, with the oath taken by the Lord Chancellor himself, viz.

"To serve the king and his people, and to counsel the things that toucheth the king; to prevent the disheritance of the king, or fraud to his people; and not to disclose the counsel which he shall give touching the king; and to redress damage or fraud in the keeping the great seal, and to advise the chancellor thereof," &c.

And also from the ancient commissions produced and read, giving the Masters authority, by the name and description of Masters of the Court, to hear causes, and make decrees (in like manner as the judges assistants) in the absence of the Chancellor; and to punish contempts, and to do other like acts of jurisdiction; and likewise from the actual exercise of their offices in making reports and taxation of costs, and the manner thereof proved by some of the Masters (and not contradicted) as that a Subpœna issues immediately upon the Master's taxation of costs, without any order or confirmation of the Lord Chancellor; that their reports in other instances are turned into decrees of Court, if not altered upon exceptions, and from many authorities in the law books.

By all which it is evident, that the offices of Masters in Chancery are judicial offices, or offices which partake of a judicial authority and nature; and do touch and concern the administration and execution of justice in that Court; and that the Masters are associated for that purpose to the Lord Chancellor, as alleged in the Articles.

But upon this occasion it will be proper to recite more particularly the authority of the statute of

A. 13 Edri. 1, called Westm. 2, cap. 24. "Et quotiescunque de cætero evenerit in Cancellaria, quod in uno casu reperitur breve, & in consimili casu cadente sub eodem jure, & simili indigente Remedio non reperitur; concordent Clerici de Cancellaria in brevi faciendo, vel atterminent querentes in proximum Parliamentum, &c. et de consensu jurisperitorum fiat breve, ne contingat de cætero quod curia Domini Regis deficiat conquerentibus in Justitia perquirenda."

Co. 2 Inst. 405, 407. Those here called Clerici, were at this time, and before, called Magistri Cancellariæ, and were associated to the Lord Chancellor; of whom Fleta saith,

"Cui associentur Clerici honesti et circumspecti, Domino Regi jurati, qui in legibus et consuetudinibus Anglicanis notitiam habeant pleniorem, quorum Officium sit supplicationes et querelas conquerentium Audire et Examinare, et eis super qualitatibus Injuriarum ostensarum, debitum Remedium exhibere per brevia Regis."

The granting and issuing the writ, or first process, upon the prayer of the plaintiff, or

perty prosecuting, is the first judicial act of the Court, upon the commencement of a suit.

And this proves strongly, that the king by his royal office, confirmed by this act of parliament, did at his own expence, and not at the charge of the suitor, provide these clerks or Masters, to the end that no subject who had a right, should be without a remedy in the king's courts;

"Ne curia Domini Regis deficiat consuetudinibus in Justitia perquirenda."

And the nomination of these Masters is only entrusted with the Lord Chancellor, as representing the king, and for the relief of the subject.

13 Edri. 1, Stat. Westm. 2, cap. 24, 50. Co. 2 Inst. 407, 486. Co. 1. Inst. 54, b. John Webb's Case 8 Co. 48, 49. Co. 3 Inst. 88.

So that it is a breach of his trust, in the Lord Chancellor, to confer any of these offices for gift or brocage, or to name and appoint unfit and insufficient persons; since it is the duty of his high office to provide a supply of proper officers to carry on the due execution of justice in that court.

But it is said, that it has not been constantly used to put all the Masters into commission, and that in the commission 9 Oct. 4 Ed. 6, four of the Masters only were in commission; and when they are in commission, that they have no authority to act without the presence of the Master of the Rolls or one of the judges; and therefore these commissions did not give them a judicial authority.

These commissions, as well as the office of a Master, subsisting so anciently, shew, that they were to be taken notice of, and comprehended within the statutes made to prevent the sale of offices of justice; and of late times they have all been put into the commission, as appears by the late commissions granted to the present Masters, since the Earl had the custody of the great seal, and produced at the table; and (without entering into the dispute between the Master of the Rolls, and the Masters in Chancery, touching jurisdiction, wherein the Earl, in his Defence, has declared, he thought the Masters were in the right) the judges themselves in these commissions are only authorised to hear causes, and make decrees, with the presence and concurrence of two Masters; so that the authority under this commission is not less of a judicial nature, from the number of persons necessary to make a court, no more than it can be argued from the same reason, that the judges in that commission are not judicial officers, because they cannot make a decree without two Masters.

And although the commission is not properly incident to the office of Master, as annexed thereto; yet as it has always attended upon, and accompanied the office, it proves, that the Masters from the first issuing these commissions, have been always invested with a general, judicial power, if they had not enjoyed such authority before.

But it is not necessary to rely entirely upon that point; for if these offices were only ministerial, yet they concern the administration and execution of justice in the Court of Chancery, and, as such, are under the regulation of the like offices at the common law, and are fully within the description of the statutes of 12 Ric. 2, and 5 and 6 Ed. 6. And this, according to the Earl's opinion, whom he endeavoured to terrify the Masters to contribute to Mr. Dormer's deficiency.

And as the Earl impeached, in right of his office of Lord Chancellor, was only entrusted with the nomination of the Masters for the service of the king, and for the common benefit of all the king's subjects; these offices are no more saleable, or to be disposed of for money, than if they had remained in the immediate gift of the crown, by grant under the great seal.

It was objected, that Masters in Chancery are not expressly mentioned in the act of 12 Ric. 2, and that the statute is a penal law, and ought to be construed strictly, and ought not to be extended by equity to these officers:

But the constant rule of exposition of statutes of this nature contradicts that assertion; for,

Statutes made for the furtherance and advancement of justice, for the suppression of extortion and oppression, which (says the book) are horrible and odious crimes, shall have a benign and favourable interpretation.

Beawfage's Case, 10 Co. 101, 102. Twine's Case, 3 Co. 82. Goosh's Case, 5 Co. 60. Booth's Case, 5 Co. 77. Powlter's Case, 11 Co. 34.

And upon this occasion permit me to repeat the words of that great man, the lord Coke:

"Extortion is no other than robbery, but is more odious; for robbery is open, and has always the appearance of vice; but extortion puts on the visage of truth, and is more difficult to be tried and discerned, and is for the most part accompanied with the damnable vice of perjury in the breaking that oath which the officer took when he was admitted to his office;" which proves the import and effect of the general and usual words in an oath of office. (Beawfage's Case, 10 Co. 101, 102. Co. 3 Inst. 149.]

And here I cannot help taking notice of the attempt of the Earl impeached, by his own cross examination of Mr. Eyres, the officer of the Exchequer, and the questions proposed by himself relating to the manner of his being sworn pursuant to the statute of 12 Richard 2, viz. The Earl asked him,

What was it that you did read? Did I say any thing? Or what did I do? Or to that effect?

The officer answers, "I read over the statute out of the Exchequer book in old French; and after I had read it, I carried the Bible to the Lord Chancellor, &c. who, at the conclusion, kissed the book, but he said or repeated nothing. But this has been the ancient form, which I have observed for forty years, and I believe has been always used."

In this instance, your lordships saw an ex-

favour of the late supreme officer of justice, to explain away, or turn to ridicule, the strictest and most solemn tie and obligation upon his conscience and honour, imposed by authority of parliament for the preventing corruption; whereby the Earl did then (though since upon the observation made by the world of such his behaviour, he has a little recollected) shew, that his calling God to witness to his promise for the observation of an act of parliament made against that vice, deserved to be as little considered by him, and to have as little influence upon his mind,

As oaths taken by traders at a certain place, for their better accommodation in carrying on a prohibited or fraudulent traffic.

This is a full explanation of his reserve in an equivocal answer, where he says, "That when he took the usual oath of office, he at the same time took the oaths of allegiance and supremacy, but no oath of office besides that above set forth."

Although he could not but understand the meaning of the introduction to the Articles, alleging, "That he did take such other oaths as have been accustomed;" and could not but remember his repeated observations of the ceremony, at least, which he had annually practised under this statute.

But the Earl's counsel have made it necessary to enter farther into this transaction, by their insisting, that here was no formal oath prescribed or taken, no entry or registry kept of it; and that the reading over the statute is merely an admonition or exhortation by the officer to the whole assembly.

And the Earl has insisted, that it is not an oath of office, because an oath of office (as he expressed it) is taken once for all, but this is repeated annually; and if it is an oath of office, yet it is not particularly charged in the Articles, nor referred to in any manner, because the Articles suppose it to be taken at the time of his coming into the office, which was in May 1718; and this oath, at the soonest, could not be taken by him till the November following.

To this I answer, that the manner of administering this oath is in the most solemn and significant form possible; for the repeating an oath briefly to observe the statute in all things, or containing a short abstract of the substance of it, would not be near so explicit and directory, as the reading over aloud, by a proper officer of the Court of Exchequer, the act of parliament itself, the Chancellor at the end kissing the Bible; an exhortation, which ought to make the deepest impression upon the conscience of a righteous magistrate, when confirmed by the sanction of a promissory oath.

And to say, that it is no oath of office, because he repeated it annually, is to contradict the act itself, which enjoins him to take it as Chancellor, and in the actual execution of his office: and the repetition of it annually, upon this great occasion of nominating sheriffs, demonstrates the opinion of our ancestors, of the importance and consequence of the observation of it, for the service of the king, and the benefit of his subjects; because there can be no other time more memorable, or more likely to engage attention to it, than in so public an assembly proceeding to appoint the sheriffs of the several counties of the kingdom, upon whose power, fidelity, and justice in the execution of their offices, not only the properties, liberties, and lives of the subjects of this kingdom so much depend, but even the security of his majesty's person in any time of danger; and the very being of the House of Commons, upon the just and fair returns which ought to be made by sheriffs, upon the election of members to serve in parliament.

Can this statute then be treated and called obsolete, which is thus publicly proclaimed every year, to enforce the more exact observation of it?

And to say, that the Articles are confined to such oaths of office, as were taken by him on his first appointment, is an equivocal interpretation peculiar to the Answer; for the Articles refer generally to all such oaths which have been accustomed to be taken by the Lord Chancellor by reason of his office. And this oath ought to have been taken by him upon his first appointment, if the usage of administering it at this annual season had not been an excuse for his postponing it to that time; and from that usage it has followed, that this oath is not taken by any of the officers at any other time; but it was the Earl's duty to observe this good and wholesome law, as well before his taking this oath as afterwards.

And the Earl could not have forgotten this his solemn engagement without design; it was for his interest not to mention it; and he might flatter himself, that the Managers would not have taken notice of it.

And as to the difference in the form of administering this oath from the common method, it is not material; for the usual form is not essential to the oath itself, it being sufficient that there is a calling Almighty God to be a witness of the truth of the Earl's promise, by his touching the Holy Scripture. [Co. 3 Inst. 164, 165.]

But whether the oath be constantly or usually taken in practice, or not, it will not alter the law; and the crime of selling these offices for gift and brokage still remains, notwithstanding the neglect of this additional obligation to refrain from the commission of it.

The objections made by the Earl and his counsel upon this head, have occasioned this digression.

The next part of the Earl's defence is a direct justification of the fact of which he is accused; and, not contented to leave it to his counsel (for whose excuse it might have been said, that they were willing to try every thing) the Earl himself has insisted upon it, that his taking these sums of money is lawful; because, as Lord Chancellor, he had a right of recommendation of Mr. Hamersley, as an officer appointed by patent under the great seal, and

also the right of nomination and admission of the Masters, solely in himself; and a man may dispose of and dispense his own favour upon what terms he pleases; and officers may give money for their places, and yet be good officers, as it is suggested.

But some instances of a very extraordinary nature were cited out of the History of the Exchequer,* to prove that chancellors, judges, and other officers of trust, had purchased their places of king Stephen and king John; viz. That Richard Fitz-Alured gave king Stephen fifteen marks to hear pleas; and Walter de Gray gave king John 5,000*l.* to have the king's Chancery for life; and other officers there named.

Mr. Madox, the collector and publisher of this History of the Exchequer, 43, 44, mentioning these instances, says, "That in the time of king Stephen, Geoffrey the Chancellor fined in 3,006*l.* and a mark for the king's seal. This, I understand, to be a fine then lately made with the king for the office of Chancellor, or to have the keeping of the king's seal." But at the same time Mr. Madox the publisher makes this honest reflection upon his precedent;

"Which precedent," says he, "may justly seem strange to us at this day; but it seemeth that in those times things of the like kind with this were sometimes done." Which observation the counsel, or the Earl himself, were not pleased to repeat.

And some instances were cited out of the Roman law, where part of the revenue of the emperors did arise out of perquisites of this kind; from whence it was inferred, that the taking these sums for sale of offices, was not against natural justice.

But these are of no authority in this kingdom, when they are repugnant to the law of the land, and have never been received; and the common law of England must be the rule of justice in this case.

And Mr. Dupper, the Earl's late under secretary of the bankrupts, was produced, to prove by his opinion and observation, that no office whatsoever passing by grant under the great seal ought to be surrendered or granted without an acknowledgment (as he called it) to the Chancellor or Keeper; and that he had formerly communicated these his thoughts to the Earl and his secretary Mr. Cottingham.

And your lordships, upon recollection of the evidence, will find the use and improvement they were pleased to make of this advice, in the case of Mr. Thomas Bennet's surrender.

But in answer thereto, it appeared upon the evidence in regard to Mr. Hamersley's office of Clerk of the Custodies, that there being no salary annexed to the place, it did belong to the secretary of state to recommend or to obtain the sign manual; so that the Earl's desire of gain in this instance carried him beyond the limits of his own office, where he had no right of recommendation, to raise the poor low sum of 105*l.* at the time when he was one of the regents; and thus he joined his share of the royal authority to his power of Lord Chancellor, in order to get and secure to his own private use so considerable a sum as 105*l.* from an exhausted Master! A strong evidence of his corrupt intent and views.

This single exaction overturns the whole fabric of merit, supposed to be raised by the few scattered instances of charity, which he has been pleased to divulge in evidence.

But if the authorities cited for the Earl to this purpose prove any thing, they prove too much; that the offices of the judges in the supreme courts of justice were lawfully to be bought and sold at the common law, before the act 5 Edw. 6, which is an opinion that the Earl himself, in his Answer, did not think convenient to disclose or insist upon; and it is going a long way back for an example to prove the lawfulness of an action, which he could not find without the assistance of an antiquary.

He might have brought more recent instances from countries, where unlimited power does prevail, and where justice itself, and the places in which it is to be dispensed, are not to be attained without a bribe.

But it seems as if the lord impeached had an early inclination to look out for a precedent, to give him a countenance in such like practices; yet he found none published to the world, except in the reigns of two princes, whose arbitrary behaviour produced that memorable law, the Great Charter of our Liberties, first passed in the form of a charter ann' 17 Johan', and confirmed ann' 9 Hen. 3, wherein it was at that time found necessary to declare by a law, "Nulli vendemus Justitiam aut Rectum." Magna Charta, cap. 29. Coke 2 Inst. 55.

From which declaration of the crown it necessarily follows, that the administration and execution of distributive justice to a free people, are not to be esteemed the property or estate of a great officer, to be raised or increased by his sale of the subordinate offices of justice; but are the great prerogatives of an English prince, to be exercised freely for the safety and ease of the subject, without introducing expence and charge upon the people, in their application for justice and right.

And when a doctrine of this dangerous and destructive nature to the rights and liberties of the whole nation, as it exposes their only security to sale for money, is thus avowedly and openly justified and insisted upon at your lordships' bar, by a peer of your House, who has borne the high office of Lord Chancellor of Great Britain in the first reign under the act of settlement of the crown: your lordships will take the best measures to render the subjects secure in their expectation of justice, by a suitable and public mark of your detestation of so licentious an opinion; and thereby convince the nation, that even the mere suggestion of such a corrupt principle is an undeserved re-

* Madox's History of the Exchequ. 43, 743. He says it may seem strange, and excuses it.

proach, and highly injurious to his majesty's administration.

Yet if it should be supposed by way of argument (which has not been proved, and therefore cannot be admitted) that the sale of these offices has been of late tolerated, for the greater increase of the perquisites of the first officer of the crown in the principal court of justice; yet the Earl's raising and receiving these exorbitant sums, above double to any instance before his own time, which he has made appear, upon a pretence that the business of the Court of Chancery was very much advanced during his residence there, will be as criminal, as if he had put the offices to auction, when no sum or fee had ever been taken or heard of.

And in his method of practice there can be no distinction between a present and a price; for he made the most always of his share or claim in the office. When he was only to admit upon a surrender he took 1,500 guineas for his good will and approbation merely; and when he admitted upon a death, he took 5,000 guineas at the least, although the office was greatly in debt; as in Borret's case, where the suitors will lose upwards of 12,000*l.* of their effects, by the lowest computation.

As for the small ancient fees which have been paid to the great seal for time immemorial, upon the sealing every patent, these are out of the present question; and where usage beyond time of memory has allowed the receipt of these little sums, it will be presumed (if there was occasion for it) that some act of parliament had passed to make it lawful.

And when it is said, that a good officer may give money for his place, and may resist the temptation of extortion; it is what the law of England would not trust to human frailty; and if all the actions and behaviour of the best of the Masters, with respect to their fees, their manner of proceeding upon references, and their disposing and trafficking with the money of the suitors, were to be enquired into more particularly, there can be no doubt, from what has appeared in evidence upon this Trial, but that the temptation and inclination to profit, towards reimbursing themselves the money advanced to the Earl, and the preceding Master, have overcome their most steady resolutions to virtue and self-denial.

As to the citing particular cases, wherein the sale of offices judicial, or of the like sort with those in question, have been determined to be illegal at common law, I apprehend it is not necessary; for that the reason of the common law, and the purport of the several statutes mentioned, do fully and sufficiently maintain the validity of the Articles in that respect.

And the Managers might more properly call upon the Earl and his counsel for authorities or judgments to the contrary.

But matters of a corrupt nature are always privately transacted, and no witnesses, or at most very rarely, are to be produced besides the parties concerned.

And if the Earl will produce any instance in the books, where such a transaction has been mentioned, I may engage to shew him at the same time, that it has been holden illegal.

The authority already cited by a learned Manager is express:

Stockwith cont' North, Moore, 781. "North was fined in the Star-chamber, for that he being sheriff of the county of Nottingham did take money for the gaolership and the bailiwick for his year; and at first he gave them to his servants who sold them, but himself received the money; and this was adjudged to be a letting to farm of his county, contrary to the statute of 4 Hen. 4, cap. 5. Yet there note, says the reporter, that the statute itself gives a penalty certain and pecuniary, and it is 'malum prohibitum, non in se.' But the Court held, that in as much as great corruption ensues from the greediness of the officers, and they are enforced thereto by the prices which they give for things which ought not to be sold, that this setting of offices to farm and sale, is *malum in se*, and finable." [Noy, 102.]

But the Earl objected, that this opinion is extrajudicial; and the Court were mistaken in one part, when they say, "that the statute 4 Hen. 4 did inflict a penalty;" whereas it did not, but only "prohibited the letting to farm the bailiwick," which was lawful before, and therefore properly finable, as a breach of the act.

In answer to which, it is plain upon perusal of the book, that that part relating to the act 4 Hen. 4, imposing a penalty, is only the note of the counsel, or reporter, who took that particular offence to be only *malum prohibitum;* and whether the Court did impose that fine by force of the statute, or as warranted by the common law, it will not weaken the authority; because the Court expressly declare it to be their opinion, that the selling of the office of gaoler was *malum in se*, and finable; which shewed the judgment of the Court on that part of the question; so that there is no mistake to be imputed to the Court.

And my lord Coke, in his 3 Inst. fol. 146, cap. 68, of Bribery and Extortion, and fol. 224 and 225, cap. 101, of Judgments and Execution, describes these crimes as offences at the common law, and puts his examples accordingly, which may be there consulted.

So in the case of Smith and Mall, 2 Rolls' Rep. 263, and Linley's Case, Hutton 70, where it is holden, "That if any judge or officer takes more than the usual fees, he is punishable by indictment at the common law." Which necessarily implies, that they are punishable at the common law, for taking money where no fee at all is due.

The strict definition of extortion is, "When any person, colore officii extorquet feodum non debitum, plusquam debitum, aut antequam debitum." Hutton, 52, 53. Coke, 3 Inst. 149, 150. Beawfage's Case, 10 Coke, 101, 102. Dive and Maningham, Plowden, 68, a. Coke 1 Inst. 368, b. Sir John Bingley's Case, Poph. 149, Rex and Gover, 1 Sid. 91.

But largely, "Extortion is taken for any oppression by extort power, or bycolour or pretence of right." Coke 1 Inst. 368, b.

But it is urged by the Earl and his counsel, that it appears from the statute 5 and 6 Edw. 6, that the buying or selling of these offices was lawful at the common law, and is not prohibited by the statute 12 Rich. 2, and that the statute of Edw. 6, neither declares nor creates any crime, but only imposes a special and particular penalty, by loss of the office or disability, and therefore the Earl having been dismissed the great seal, there can be no punishment inflicted upon him.

It is agreed by them, that the statute 5 and 6 Edw. 6, includes both the offices of Clerk of the Custodies, as an office of clerkship in a court of record; and of the Masters in Chancery, as officers touching the administration and execution of justice, in point of description.

And upon reading the act it is evident, that this statute in the preamble, and throughout the whole act, treats this way of dealing, as a corruption, and illegal in its nature, and expressly calls it so.

The preamble says, "For the avoiding of corruption, which may happen hereafter to be in the officers and ministers in those courts and places, wherein there is requisite to be had the true administration of justice or services of trust."

And this statute carries the punishment farther, but does not take away the punishment of it as a misdemeanor at the common law, by fine or imprisonment upon indictment.

And there is not any proviso in the act which mentions or exempts the Court of Chancery, or any of the officers of that Court; but in consequence, when it mentions other courts in a proviso, must more strongly be intended to include them in the act.

The first proviso extends to offices of a private nature, and to offices of inheritance, and cannot relate to any judicial office, nor to either of these officers, who hold only for life; although, where the nature of the office has allowed it to become inheritable, it makes it alienable; but no such instance is to be met with in the case of judicial offices.

The second proviso is to prevent any person's being surprised into the penalty unwittingly, before notice of the act, or by a retrospect. And although the statute takes notice that divers persons did make such corrupt bargains, it is only by way and with an intent of preventing, and not of legitimating them; and it leaves them all as they stood at common law, until that day appointed by the act was passed.

And the last proviso does nothing more, and leaves the justices to act upon their own knowledge and discretion in the law, according to the nature of the office, without casting any imputation upon them unnecessarily.

But so exceeding cautious was the legislature, that there is not any expression, in any part of the act, to declare or enact such bargains in the cases excepted, to be good.

But the statute leaves them entirely to the regulation and direction of the common law and former acts of parliament.

So that although the earl of Macclesfield, by his being dismissed from the office of Lord Chancellor, is not liable to suffer the additional punishment, contained in this act, of loss of his office: yet he will still be liable to the punishment at common law, and upon the several other statutes, and accordingly remains open and subject to your lordships' just sentence.

For where a statute does give or impose a new penalty, for a matter which was an offence at the common law, the prosecutor may pursue either of the remedies; although where a statute makes or creates the offence, that remedy must be taken which the statute gives.

Regn' cont. Wigg' Pas' 4. Anne Banc, Regin' Salk. 460. Com' Leicest. et Mandy 2 Sid. 32. Dr. Hussey's Case, 9 Co. 74. Cranbank's Case, 2 Rolls Rep. 49. Burgen's Case, 1 Ven. 13. 1 Sid. 409.

Thus I have gone into this long debate, to shew that the Commons have founded their Articles upon the general rules of the common law, supported and enforced by divers acts of parliament.

As to the proofs;

I shall now take notice of the evidence upon the particular Articles assigned to me, and shall observe not only upon the proofs given by the Commons in maintenance of those Articles, but likewise upon the examination made on behalf of the Earl impeached, and in his defence.

As to the money Articles, I shall make this general observation upon the evidence, that it has been agreed by all the witnesses examined thereto, as well by Mr. Cottingham, the Earl's secretary, and on these contracts his lordship's broker, as by the Masters themselves, and their agents, that the whole transaction was done and finished, and the money actually paid and delivered into the Lord Chancellor's own hands (except Mr. Thurston's 5,000 guineas, which were delivered to another for his lordship's service) before the resignation of the former officer was accepted, and before the admission and swearing of the successor.

So that the principal point and main stress of the Articles are thus in fact agreed upon by both parties.

But as to these Articles, and more particularly with respect to the 105*l.* received from Mr. Thomas Bennet, and the 1,500 guineas each received from Mr. Kynaston and Mr. Bennet, the Earl and his counsel have suggested a deficiency in the proof, arising from a contrariety in the evidence given by Mr. Cottingham, the Earl's secretary, to what has been sworn by Mr. Bennet, Mr. Kynaston, and Mr. Charles Baily; and, upon the credit of the secretary's testimony, would suppose that each of these sums proceeded first from the free and voluntary offer of the Masters, and was not insisted upon by the Earl or his secretary before-hand, as charged in the Articles, and proved by the Masters, but only accepted and

received by Cottingham and the Lord Chancellor.

But the nature of the transaction, and the circumstances of the persons, do very strongly support the credit of the witnesses produced by the Commons, and the probability of their testimony, who have proved every part of those Articles, in the very words of them: and Mr. Cottingham himself has confessed enough to maintain the Articles in substance, although he should be credited in any circumstance wherein he varies from the other witnesses.

As to the ninth Article, it will be very difficult to believe that Mr. Bennet, who had lately paid the Lord Chancellor so large a sum for his admission to the office of a Master, which he had borrowed of his brother, and who had paid no admittance money for this place of Clerk of the Custodies to the former Chancellor, the earl Cowper; and who had likewise been informed by his brother Mr. John Bennet, that nothing was paid by him to earl Cowper upon his being admitted to the same office, and that lord Cowper himself had declared to Mr. John Bennet that there was nothing due upon his admission; that Mr. Thomas Bennet, under these circumstances, should of his own accord first propose a present (as it is called) when he could not well imagine that there was any pretence to it; that is hardly credible.

And Cottingham himself has owned, that he told Mr. Thomas Bennet that something was expected, and that he carried the proposal of 105*l.* to the Earl, who accepted it, and thereupon he received the money from Mr. Bennet, and paid it over to the Earl; after which the Earl then took the whole care upon himself of expediting the sign manual and the patent.

Now, Cottingham being the factor employed by the Earl in all these bargains, who has been avowed by the Earl to be his agent, and has been produced as his witness, and supported by him; every thing that Cottingham declares and acts in completing these contracts, will be considered as the act of the Earl himself, and his own bartering; especially, when Cottingham (as he deposed before your lordships) did not conclude the bargain, until he had received the Earl's approbation thereof; and when the Earl, at the end, confirms the whole by his receipt of the money.

And a Lord Chancellor's expecting something, or a sum of money, be it more or less, and this his expectation declared and notified by his secretary to the person applying to be admitted into the office, is a peremptory demand, and an insisting, when the Lord Chancellor alone, and no other, has the power of taking the resignation, or making it effectual by passing the new patent, and of admitting the new officer.

But this matter has been explained and confirmed by the evidence of Dupper the under secretary, the Earl's own witness, upon whose authority the Earl relied, who acquainted your lordships, that upon Cottingham's telling him of the intended surrender of Mr. Thomas Bennet, Dupper said, there ought to be an acknowledgment to the great seal, and he had heard that money had been given, which Cottingham himself at first doubted of; but Dupper soon satisfied both the Earl and his secretary that money might be asked.

This confirms the evidence of Mr. Thomas Bennet, that nothing was said about money to be given, or an expectation of something, at his first meeting with Cottingham, but it was introduced by Cottingham at their second meeting; which must be after this advice and information of Dupper, and that then the resolution was taken of expecting a sum of money.

This argues the diffidenee of the Earl impeached in setting up this pretence, and his suspicion of the illegality of it; yet the opinion of the person advising, and the Earl's own inclination to gain, were too powerful to be resisted.

But to remove the foundation of this objection:

The point or charge of these Articles lies in the taking these sums by the Earl, *colore officii sui*, as Lord Chancellor, and without right, which is extortion and corruption.

And if he did receive these payments by colour of his authority, and without right, (and he has made out no pretence of right) he will be guilty of the crimes charged upon him, in how artificial a manner soever he transacted these matters.

It will amount to the same, whether they proposed the sum to him, or he made the demand upon them; yet if something was expected by him, and he declined doing the duty of his office, until that something was offered and paid to him, it is an exaction and an imposition, which is criminal, and maintains the Articles. [Co. 3 Inst. 148, 149. E. Middx.'s Case.]

And it is remarkable, that the Earl would never give credit for his present, but always had it safe in his own hand, before he admitted the officer.

It has been attempted, on behalf of the earl of Macclesfield, to prove that former chancellors have used to claim and receive money upon the taking surrenders, and making new grants of this office; but herein the Earl has failed, and has not been able to give legal proof of any one instance of that kind, upon the change of this office of Clerk of the Custodies.

For Dupper did not see any money paid on that occasion, nor knows any thing of it, of his own knowledge, but only copied an account which he came by very oddly, wherein (as he says) there was an item to that effect; and his evidence depended merely upon hear-say, and ought to have no regard.

The evidence of Mr. Oker turns against the Earl; for although there were surrenders in both the times, when earl Cowper held the great seal, yet nothing was paid or taken by him; and upon the surrender of Thompson to Edwards in the late queen's time, it was said

that nothing was given; and upon the surrender of Mr. John Bennet to Mr. Thomas Bennet, whilst earl Cowper enjoyed the seal under his majesty, nothing was paid or claimed.

And the supposed intimation or opinion of lord Cowper, which Oker mentions, was between these two surrenders, which makes it very unlikely that earl Cowper should make such a declaration; yet if such discourse there was, it is plain, that, upon better consideration, the lord Cowper departed from such pretension, and discovered no expectation of any thing, upon the last surrender and grant of this office.

And as nothing was taken by lord Cowper, upon the surrender of Mr. John Bennet to Mr. Thomas Bennet, it will be proved, that, on the surrender of Mr. Edwards to Mr. John Bennet, lord Cowper refused to hear of a present, when it was hinted at, and declared that nothing was due to the great seal.

But this defence, which is founded upon a supposed usage to receive a fee for permitting such surrenders, and from thence would infer a right, or an excuse to the Earl impeached, in doing the like, is a proof and confirmation of the Article, as charged by the Commons; that the Earl did insist upon the money, as his right and due.

Art. V. As to the bargain with Mr. Kynaston, it appears from his testimony, and the evidence of Mr. Charles Baily, who paid the money, that Mr. Kynaston endeavoured to obtain the admission at a lower rate. At first he offered but 1,000 guineas; and at the end Mr. Baily understood it to have been agreed for at 1,500*l.*; and when Mr. Cottingham said 1,500 guineas were expected, Baily did not proceed till he had informed Mr. Kynaston therewith, who answered, that since Mr. Cottingham had mentioned that sum, he must submit, and do accordingly.

And this dispute, upon the difference between pounds and guineas only, explains the manner of these dealings; that they were formal contracts and bargains between the Secretary and the Masters, at the best price that could be got; and though there was no haggling with the Earl himself, (as Cottingham expressed it at one of these dealings) yet he had a faithful steward, who could and did haggle very well for him; and when the Secretary had done his utmost, the Earl accepted the price which had been agreed upon.

Art. VI. As to the 1,500 guineas paid by Mr. Thomas Bennet for his admission, and the manner of making that bargain, Mr. Bennet's evidence of his first offering 1,000 guineas, and Cottingham's refusal of it, saying, He hoped Mr. Bennet would not lower the price, and the hazard of his being refused, and that there was no haggling with my lord, and at last agreeing for 1,500 guineas, is supported from the usual behaviour of Cottingham, as well as from the probability of the thing itself; that a man may reasonably be presumed to endeavour to save what he can, and when he is purchasing, to get it at the cheapest; although (as it has appeared upon the examination) Mr. Bennet had little reason to expect that a succeeding chancellor would be satisfied with his circumstances and admit him.

Upon the Earl's defence against the charge contained in these two Articles, it was proved by Mr. Goldesbrough the Register, that the Earl, about the 23rd of February last, had paid those two sums into the Court of Chancery, to be applied for the benefit of the suitors; and this is offered either in his discharge, or as a merit. But this was done several days after the Impeachment, and after public complaint had been made against the Earl upon these two instances, and is a very proper example of the Earl's own construction of a voluntary present; for after the House of Commons had taken this affair into their consideration, and had demanded justice and satisfaction from the Earl by a parliamentary prosecution, the Earl then did freely and voluntarily, and of his own accord, make a present to the suitors of the Court of these two sums, which he had, in the like free and voluntary manner, received as a present from Mr. Kynaston and Mr. Bennet.

But this action contradicts his whole Defence; and shews that he was convinced that he had no right to receive or detain the money, and was afraid to keep it any longer.

Art. VII. and VIII. As to the two 5,000 guineas received by the Earl of Mr. Elde and Mr. Thurston, it is proved that the price was settled between them and Mr. Cottingham; and when Mr. Elde (of whom the Earl expressed so good an opinion) offered 5,000*l.* Cottingham said guineas were handsomer; and the particular method of payment shews the inward rebukes of his conscience, and his fear of a discovery.

And these two facts shew the prevalency of his avarice, above any other passion. For in Mr. Elde's case, he broke through the obligation of gratitude and friendship to him, to receive his money in a covered manner, in a basket. And in Mr. Thurston's, he tried to beguile his fear of a discovery, by suffering the money to come to him through a private and unsuspected hand.

And these two instances were of so nice a nature, that his faithful secretary owned, that he was not admitted into the secret. For it appears that the Earl either knew or suspected there would be a loss in Borret's office by his insolvency, though it was not reduced to any certainty; and it now appears, at the least, to amount unto 12,000*l.*

But the Earl left the suitors of the Court to bear that loss, and never took care to procure a just satisfaction to them. Which the Commons urge both as an evidence and an aggravation of his guilt; since he therein preferred his own private gain to that security, which

his high trust required him to have provided for the creditors of the Court.

And the returning great part of these two sums, after the confusion and disorders of the Court became public; and part of Mr. Elde's money, after the Masters had been called upon to bring in their cash, and which upon Mr. Elde's evidence may be reasonably presumed to have been made use of by him to make a false shew before the commissioners; are rather decrees against himself, than any extenuation of his guilt.

And as to the Earl's great merit, which he so largely dwelt upon, and so often repeated, that he might have had 6,000*l.* from Mr. Lucas, which he relinquished, to accept of 5,000 guineas from Mr. Elde; the Managers will call Mr. Lucas, who (in answer to Mr. Elde's testimony) will prove, that when he offered the 6,000*l.* it was upon this express condition, that if the money of the suitors, or the cash, was taken out of the Masters' hands on a parliamentary enquiry, he should have a return of some part; and that the Earl should indemnify him against all deficiencies.

So that the Earl did not refuse Mr. Lucas's 6,000*l.* from a disinclination to the sum if he could have kept the whole securely; but because 5,000 guineas paid absolutely, was better than 6,000*l.* subject to a condition of refunding, and incumbered with an engagement of indemnification.

But the Earl's chief defence is raised from the practice of his predecessors, (who as he pretends) led him into these mistakes; and he has proved 700*l.* to have been paid by Mr. Lovibond, about twelve years since, and 800*l.* by Mr. Holford, and 500*l.* by Mr. John Bennet, in the year 1716, upon their respective admissions into the offices of Masters; and from thence insists, that although he cannot claim the exact sum of 1,500*l.* received by himself upon admissions, as a certain and established fee or perquisite, because he has taken twice as much as his predecessor did; yet this practice gives him a right to a present, and it was in his own discretion to declare the sum, as he should think reasonable, according to the late increase of the business of the Court.

But, a present altogether uncertain in the quantum, and depending in this manner upon the pleasure of the person who is to receive it, seems to differ very little, if at all, from a price.

The Earl insists likewise, that the denial or refusal of some other of the witnesses to answer his questions, is a farther proof that they paid money.

This shews that the Earl thinks he wants the proof very much, when he makes use of such an argument to raise evidence.

The witness refuses to answer such questions, which he is not obliged by the rules of law to resolve, concerning the manner of his admission; and the Commons cannot call witnesses to contradict or explain that which has never been delivered in evidence.

Yet the Earl desires your lordships to believe this as evidence, though you never did hear it, and to act and vote, upon your honour, as if you had heard and admitted it.

But howsoever the Earl may have directed himself, he can never think that such an unjust insinuation will prevail upon your judgment; or that he can thereby move your lordships to give up your honour in the highest exercise of your judicial power.

And these two or three late instances, which he has produced, cannot change the common law, or repeal the several acts of parliament, whereby they are declared illegal; and if he makes use of them as precedents, he ought to take them with all their circumstances, which upon the whole matter rather turn against him. For Mr. Holford and Mr. Lovibond were at that time, and still continue men of substance; and Mr. John Bennet was of ability at the time of his admission, although in the year 1720, he sustained several losses, which impaired his estate. And they all paid the sums of money mentioned out of their own estates, and no part of it out of the suitors' cash or effects: And the whole of the suitors 'effects was delivered over to them by an account with which they stood charged.

So that although these few instances were not animadverted upon, either because they were not publicly known, or that no inconvenience did ensue therefrom; yet they will afford no excuse to the Earl impeached, for taking double or treble the value of those sums upon his admission of Masters, who were persons of small or encumbered estates, and who were necessitated to employ the cash and effects of the suitors in the payment for their offices, and for their admissions; and through whose insolvency so great a loss and damage has come upon the suitors.

But an officer of public trust and service ought to look well to his precedents before he follows them; and if he will pursue an illegal or unjustifiable precedent, he does it at his peril, and must answer for the consequences; especially in the situation of the highest officer in the kingdom, who was entrusted with the administration of public justice, in the supreme court of law and equity; and whose duty it was, as well to declare and expound the law to others, and to regulate and reform the exactions and abuses, which at any time may have crept into the inferior courts of justice to the injury and oppression of the suitors of other courts, as to prevent or suppress corruption and extortion in the Court where he more immediately presided.

Art. XI. As to this Article, the particular circumstances of Mr. Kynaston and Mr. Thomas Bennet have been proved, and the deficiencies in their offices, and how unequal they were to the trust of the great sums and effects deposited in their hands.

By the orders of the Court, which have been read, it appears that Mr. Kynaston's deficiency amounts to 26,908*l.* 11*s.* 3½*d.* and Mr. Bennet's to 16,075*l.* Mr. Kynaston had about 50,000*l.* in

money and effects of the suitors in his custody, and Mr. Thomas Bennet near 100,000*l.*

This is likewise a high breach of trust in the Earl, and is an offence against the statute of 12 Rich. 2, cap. 2. "But that they make all such officers and ministers of the best and most lawful men."

Which words in the law import sufficiency of substance, as well as capacity.

And the statute 2 Hen. 6, cap. 10, takes it for granted, that the superior officers were before that time under the obligation of the common law, or some former statute to that effect; when by the said act, 2 Hen. 6, cap. 10, Co. 4 Inst. 114, intituled, "What manner of inferior officers shall be appointed in the king's courts," it is enacted, "to the intent that better and more sure government be had in the courts of our lord the king, for his profit, and ease of his people, which have to pursue and to do in the same;" it is ordained and established, "That all the officers made by the king's letters patents royal within the said courts, which have power and authority by virtue of their offices of old times accustomed, to appoint clerks and ministers within the same courts, shall be charged and sworn to appoint such clerks and ministers for whom they will answer at their peril, which be sufficient, faithful, and attending to that which pertaineth to them in performance of the business, as well of the king as of his people."

This act would have been extended farther, if it had been esteemed necessary.

The frame of both these statutes does shew the bent of the English constitution, to provide for the ease and benefit of the subject.

But the old rule 'respondeat superior,' will hold against the Earl in this case, especially when it appears by the evidence of Mr. Goldesbrough the Register, a witness produced by the Earl, that this practice of paying money generally into the hands of the Masters, was not in use at his first coming into the Register's office, about the time of the Revolution. So that the Earl impeached took upon himself the disposition of the suitors' money, without a proper ground and justification.

And the offence contained in this Article does not depend upon his knowledge, that the persons admitted were insufficient and unable; but that the Earl did not require and take full satisfaction and evidence in a proper manner, to make it manifest that they were able and sufficient, as had been done by his predecessors; particularly when Mr. Holford was admitted Master, his father was obliged to settle a real estate upon him of good value.

The Earl ought either to have advanced persons equal to the great trust and charge, or to have reduced the trust and deposit to the condition and circumstances of the person, as his predecessors had done.

So that it is evident the Earl had only in view the price and profit of the sale of the office, which would rise highest upon the inability and unfitness of the officer.

And it was therefore very properly said by one of the Earl's counsel, that he weighed the Masters before he admitted them.

But he weighed them only for the sake of the price they were to pay to himself; and when he had done with them, he left them of very little weight for the security of the suitors. His false, though memorable declaration in open Court, upon the 21st of Jan. 1723, explains his whole scheme, when he published from the bench, "That the present Masters were men of as great fortunes as any set of Masters had ever been."

The words were proved by Mr. Waller, and have not been contradicted by any witness.

At that time Mr. Dormer's deficiency had taken air; and Mr. Waller upon his examination said, The suspicion of several of the Masters was then so strong, that this publication raised astonishment in the hearers. But there was then a vacancy, and an office to be sold. Mr. Fellowes died Jan. 19, 1723, and it became necessary to give the office a reputation.

And although the insufficiency of some of the Masters had been decently intimated to the Earl by Mr. Lightboun, upon his several proposals, and the Earl may be presumed to know the general apprehensions of the world; yet in this solemn manner the Earl became an officer to himself, to proclaim his own market.

Art. XII. The practice and injury to the suitors can hardly be more aggravated than is expressed in the Article itself.

And it has been proved in every particular necessary to support the Article; and no proof has been offered on the part of the Earl to contradict or extenuate the Charge, by making appear his vigilance, or any care or regard to prevent the fatal consequences of the practice.

The particular methods of preventing this fraud specified in the Article, are only to shew the practicability of some sort of measures proper to have been put in execution, in order at least to render the corrupt practice and abuse difficult, although they had not proved complete in all respects to redress and prevent them.

And by the witnesses called on the part of the Earl himself, it was expressly proved, that some of these methods had been practised with effect in the time of his predecessors, and that no loss had happened to the suitors during that regulation.

An account of the suitors' cash and effects was brought to the then lord chancellor Harcourt by Mr. Holford, as the account of his predecessor, before he was admitted; and he was thereupon asked if he would be bound by that account, and stand charged accordingly? To which he agreed, and his substance was sufficient to answer it.

The cash money was for some years locked up in the hands of the two junior Masters in lord chancellor Cowper's time.

And it has been proved, that the total accounts of all the Masters have been taken three

several fines within a few years; that is, twice by lord Cowper, and once by lord Harcourt.

And although the Earl seems either to doubt of his authority, or of the possibility of doing this in his own time; it can be proved, that he requested to see the accounts, and to be informed of this method, and accordingly had a sight of the books, and made an appearance of putting it in execution.

Besides, the late accounts delivered in by the several Masters before the commissioners named for that purpose, shew, that such an attempt was practicable, and might have been completed in a reasonable time.

But the earl of Macclesfield, by his own confession, is guilty of a total neglect of all measures; and never prosecuted one honest and real step towards the suppressing this abuse.

He might have given directions and made orders for the securing the suitors' effects, in the same manner before the late enquiry, as he has done since.

His secretaries and agents might have supervised the observation of these orders; and have attended to inspect the complete transfer of the suitors' effects, as well as to receive his lordship's extorted premium.

And if after the Earl had taken these, or any other probable measures, the Masters had broken their trust, the fault would have lain upon the dishonesty of the Masters, and not upon the connivance or negligence of the Lord Chancellor.

But upon this Article the Answer of the Earl impeached is directly falsified. For he declares upon his honour, upon that honour which is communicated to him from the privilege of the whole order of Peers (but of which he himself has only made a shew or appearance) that he was totally ignorant of this practice; although it appears in proof to have been a matter publicly known during his administration. It was one inducement to Mr. Kynaston, and the single temptation to Mr. Thomas Bennet.

This notoriety is a reasonable evidence to charge the Earl with the knowledge of a fraudulent transaction propagated under himself; especially when the pretence of his ignorance must arise from the wilful neglect of his duty.

But express notice is proved out of his own mouth by Mr. Thomas Bennet; and farther, that the Earl had been used to prostitute his honour by a course of denial of this fact upon former occasions.

For Mr. Bennet in his account, which he had delivered in to the judges, had inserted this remarkable item, viz. "Item, 9,075*l.* in the hands of persons of ability;" which included the 7,500*l.* paid to Mr. Hiccocks, and the 1,575*l.* paid the Chancellor for his admission.

Mr. Kynaston also in his account had inserted an item to the same effect for a like sum.

Mr. Thomas Bennet went soon afterwards to the Chancellor, who entered into discourse with him thereupon, and said: "I am sorry you have given in your account in this manner; it was the worst way in the world: for all the world will now judge, that you paid for your office out of the suitors' money; and what hath been so much suspected will now be discovered, which I have always taken so much pains to deny, whenever I was asked the question:" and wished he had been acquainted with Mr. Bennet's necessities before Mr. Bennet had given in that item; or to this very effect.

The probability of the truth of this evidence stands confirmed from the nature of the thing, and the state of the account itself, which has not been contradicted by the Earl; and seems farther strengthened by an opinion which the Earl had entertained, and which he dropped in his defence on Wednesday, viz. "That the suitor was not the worse by this method; for by this detention the former Master remained still responsible," and as he observed by Mr. Meller's retaining some part of the suitors' effects, the deficiency in Mr. Borret's office was not so large.

This seems a strong symptom of the Earl's knowledge of the practice when it had obtained his approbation.

But the money retained by Mr. Meller was no part of the price of the office, but were other sums and effects which he retained in his hands, and never paid over to Mr. Borret, upon the repeated application and request of the suitors, who doubted Mr. Borret's sufficiency.

But, suppose the former Master had died, or failed with these effects in his hands; how should the suitor have come to a full and legal proof of this transaction? And how many persons was he to prosecute, to discover and receive his own money?

The importance of this part of Mr. Thomas Bennet's testimony has given occasion to the Earl and his counsel to object to his credit; and an endeavour has been used to make out, that Mr. Bennet has contradicted himself, and has denied here at your lordships' bar upon his oath, what he had formerly declared to other persons.

For that Mr. Bennet being asked (with an intent to prove his ability to pay the rest of his deficiency) "Whether he had not said, that if Mr. Hiccocks would pay him back 2,000*l.* he would pay the rest himself," Mr. Bennet denied he had so declared; and yet, as they urge, the contrary is sworn by Mr. Holford, Mr. Thurston, and Mr. Elde.

In answer to this Mr. Holford gave in evidence, that Mr. Bennet said, "that if Mr. Hiccocks would pay him back 2,000*l.* he would take care that the rest of the money should be raised." But Mr. Bennet did not say, "he had the money," though Mr. Holford believed he had by his manner of speaking.

Mr. Thurston deposed, that Mr. Bennet declared "he would make up the rest himself;" but afterwards told him, that "all he had in the world would not pay it:"

And Mr. Elde swears to the same effect.

And this testimony does not contradict, but rather confirms Mr. Bennet's evidence. For he made no direct declaration of his ability to pay the rest, but being liable to the suitors, he seemed to be willing to get what he could from Mr. Hiccocks.

Besides, his discourse at these times cannot stand in competition with his oath, according to the common rules of evidence; and a witness's credit is not to be taken away upon an uncertain expression, proved by each of the Earl's own witnesses in different words, when from the ambiguity of it there cannot possibly be any voluntary contradiction.

But the Commons will confirm the truth and fairness of this testimony of Mr. Bennet, by proving that the Earl had expressed the same concern and dislike of the manner of these accounts in respect of these items to others, before any parliamentary enquiry.

There is likewise another matter of fact, which assists the proof of this Article, which is, that the price of the office, and of the admission, are comprehended in the accounts of the Masters' deficiencies, and make the greatest part of Mr. Bennet's deficiency, and near a moiety of Mr. Kynaston's:

Which manifests the danger and injury of this unjust practice to the suitor, whose estate is thereby put upon the hazard of the Master's good or bad success, and his property lost with a deficient Master.

And here the corruption and misbehaviour of the Earl appear with the highest aggravations.

The extorted profit made by the Earl is raised out of those effects which are deposited in the Court upon the faith and honour of the king's administration under the care of the chancellor, as chief trustee, by whose connivance (if not consent) they are thus embezzled; and the miserable suitor must either sit down with the loss, or be forced to expend his little remaining substance in a tedious process to recover back his own estate thus wasted and converted by the Masters.

Unnecessary delays and protractions of causes are the unavoidable consequences of this practice; and in this manner the business of the Court, and the profits of the Masters' offices have been increased by the pursuit of the parties after their own effects, which in the conclusion terminates in so heavy a loss.

The late orders made upon the petitions of Mr. Hiccocks and Mr. Rogers since the Impeachment, and some since the Trial commenced, though not proved to have been as yet complied with, and at best are but deposits to attend the event of the contest between the former and the present Masters, have been made use of by the Earl in his defence; which is a new attempt in him to make a false shew and appearance of restitution and satisfaction.

Although if it were a real and a complete return of the principal money, it would be a very small excuse and extenuation for the vast prejudice done to all the suitors of the Court, by the locking up their money, effects, and securities, and stopping the payments thereof many months, besides the loss of interest the cash, and their being hindered from employment of their money.

The Earl has not adventured to enter particular discharge of the total deficiency signed by the Commons, upon the evidence Mr. Thompson, and collected from the accounts stated upon the late enquiry, amounting more than 100,000*l.* Nor has he given answer to the great loss which the injured suitors sustain by the insolvency of the two ceased Masters, Dormer and Borret.

This great confusion and damage brought upon a court, where the estates of the most wealthy subjects, as well as of lesser people sooner or later come, became a national concern, not merely from the extensiveness of the loss to the particular suitors, but likewise from the apparent danger thereby arising to the public.

This general ruin awakened the care and zeal of the Commons in parliament for justice to their fellow subjects.

This introduced the Charge against the Earl in the 12th Article, which has been proved as is alleged, viz. "That by this unjust and fraudulent practice, the corrupt profit made by the Earl upon the sale of offices of Masters in Chancery, has in consequence been raised and received by him out of the effects of the suitors in the Court, for whom he was entrusted; in breach of the trust reposed in him for the preservation of the estates and effects of the suitors to the dishonour and discredit of the Court, and to the great injury and defrauding of the suitors, in a court of equity established for the relief and protection."

My lords, if the misdemeanours of which the Earl impeached stands accused, were not crimes by the ordinary rules of law in inferior courts, as they have been made out to be; yet they would be offences of a public nature against the welfare of the subject, and the common good of the kingdom, committed by the highest officer of justice, and attended with a great and immediate loss to a multitude of sufferers; and as such, they would demand the exercise of the extraordinary jurisdiction vested in your judicature for the public safety, by virtue whereof your lordships can inflict that degree and kind of punishment which no other Court can impose.

When these offences have been proved upon the Earl impeached, of what consideration in judgment can the Earl's mistaken and misplaced charities be? Can they alter the facts charged upon him? or turn extortion and *fraud* into liberality and piety? Can the merit *of* a few private good works atone for the plunder of the whole body of the suitors of the Court of Chancery, upon whom this Earl, by his misbehaviour, has brought a deficiency of 108,000*l.*?

He depends upon the prayers and wishes of those few, who have been the partakers of his bounty, without being sufferers by his crimes. But the voice of the Commons for justice

against this great offender, not only includes the complaints of the particular sufferers, but the accusation of an injured nation, whom the Earl had endeavoured to cut off from the protection, which ought to be derived to them from the father of his people.

The Commons having now maintained the truth and justice of their Charge against the Earl impeached upon these Articles, leave him to your lordships' just determination.

Mr. *Lutwyche.* My lords; I am commanded to assist in the reply: and since I was obliged to bear my share in this prosecution, I was willing it should be such as would give me an opportunity of hearing what would be said and proved in the impeached lord's Defence, before I spoke freely upon the matters in judgment before your lordships.

And I may now venture to say, as he was unfortunate to bring so heavy a charge upon himself, he has still been more unfortunate in his Defence; I submit it to your lordships' observation, whether any part of the evidence offered by the Managers has not been confirmed, nay, enforced upon him, by his own evidence; and some of the charges upon him he has endeavoured to evade by such excuses and arguments, as have made even his Defence criminal.

My lords, upon the examination of the first witness produced on the part of the Commons, his lordship was pleased to make it a question, whether he took the oath directed by the statute of 12 Richard 2. The objection seemed to be, that though the statute was read, and his lordship kissed the Bible, yet he was sworn to nothing. This was so surprizing to all that heard it, and the report of it raised such indignation, that it might have been expected his lordship would have drawn a veil over this part of the case, and have taken care that it should not be mentioned again; but instead of that, his counsel, nay he himself, have thought fit to bring this point into dispute in his defence, and his lordship does not even yet fully own that he took the oath.

The statute has been represented as obsolete, read in old French, and not regarded, and the oath not duly administered; that the officer said nothing to his lordship, nor he to the officer.

The witness told your lordships, that at a meeting of the great officers every year in the Exchequer, this statute was read, and they immediately kissed the book; and that this was the usual method of taking the oath prescribed by that statute.

My lords, I would observe, that if there had been any thing in the taking of the oath that his lordship thought not regular, it was his duty, who was the chief of that assembly, to put them in a right method agreeable to the statute: and therefore this objection is very extraordinary to come from him.

It is a dangerous practice for any one to make a shew of taking an oath, and yet, by some nice distinctions, endeavour to persuade himself or others that he is not sworn.

I do not know but most of the old oaths that are taken, may by the like arguments be evaded, as well as this; the very oath of office set forth in this lord's Answer is, You shall swear, &c. and in that case a nice distinguisher may as well say, that he repeated nothing, and that there are not words *de præsenti*, whereby he is sworn. But where is the defect in administering this oath? The officer reads out of the statute, that the Chancellor, treasurer, &c. shall be sworn, and then they kiss the book.

I do not see there is much difference between saying, The Chancellor, treasurer, &c. shall be sworn (they being at the same time present) and saying, You the Chancellor, treasurer, &c. shall swear.

I shall therefore have the charity for the noble lord to think and take it for granted, that he was sworn as the statute required, and that he understood the statute, though it was read in old French, and that he did not prevaricate, when he did this solemn act.

Supposing therefore that the statute 12 R. 2, is in force, and that the oath was really taken; the next consideration is, what the law is upon the several facts and circumstances proved against the impeached lord in relation to his selling the offices of Masters in Chancery.

The Answer put in to the Charge of the Commons says, The Masters freely and voluntarily sent a present without admitting any particular sum; we say that particular sums (and those very exorbitant) were insisted on, and a bargain driven for the offices, as much as could be in any case by way of brokage: nay, the very benefit of having the suitors' money comes into the consideration of the price.

The words of the statute of R. 2, are general, and in point of reason it should extend to this case above others; because the offices of Masters in Chancery do not only concern the administration of justice, but are in some measure judicial; they transact a great part of the business of the Court, and have usually been in commission together with the Master of the Rolls, and the judges, for hearing of causes.

Lord chief justice Coke in his 3d Institutes, p. 145, places this offence of selling offices under his chapter of Bribery, where he states the definition of bribery to be, "When any man in a judicial place takes any fee or pension, robe or livery, gift, reward, or brokage of any person that hath to do before him any way, for doing his office," &c. He comments upon the words of this definition, and more particularly upon those words, "of any person that hath to do before him any way," and he takes notice, that it is not confined to taking money, where a suit is depending; but also where any in a judicial place doth any thing for gift or reward by virtue or colour of his office, though there be no suit at all depending.

For example, (says he,) "If the lord treasurer, for any gift or brokage shall make any

customer, comptroller, or any officer or minister of the king, this is bribery: for he ought to take nothing in that case by the statute of 12 R. 2." This example also proves, that the statute is not confined to the construction that has been endeavoured to be put upon it, that it relates only to cases, where the Chancellor, treasurer, &c. meet together, as they do, when they nominate persons for sheriffs; for the example is of the lord treasurer alone.

But, my lords, we insist upon it that this, as well as other statutes (that have been mentioned) are but declarations, and further remedies for what was the common law. The case that was cited out of Moor's Reports, 781, takes it to be so, of a sheriff selling the office of gaoler, and his bailiwick; but there was an objection made to the Report of that case, that it says the statute, 4 H. 4, c. 5, gives a penalty certain and pecuniary; whereas that statute gives no certain penalty, and therefore it might be a right resolution upon that statute. But the declaration of the Court, upon which the party was fined, was because the offence was *malum in se;* and though that statute of 4 H. 4, gives no penalty, yet I think the statute 28 H. 6, c. 10, does give a penalty of 40*l.* in the same case of a sheriff, and yet the party was fined at the discretion of the Court. The same case is also reported in Noy, 102, where he takes no notice of any penalty, and the Report is in these words: "N. was sheriff of Nottingham, 43 Eliz. and took money for the offices of gaoler and bailiwick, and he first gave them to his servants, who sold them, but he himself had the money." And he was fined for that, for it is contrary to 4 H. 4, cap. 5. And also by the Court, that that is a corruption, and a great cause of oppression in the officers, and such sale of offices is *malum in se*, and fineable.

My lords, I think the impeached lord has advanced a very dangerous position upon this point. He is pleased to say, the public has nothing to do to enquire about any thing, but whether the officer be a good officer; that if he be so, the public is not hurt, though he gives the Chancellor money for his place. Here I presume he was sensible that it might be objected, that the same argument would hold for taking money in a cause before him, provided it was a good judgment: And therefore was pleased to say, that the difference between this case and taking a bribe for judgment in a cause is, that in the one case the party has a right to have judgment, but in the other case no man has a right to his favour or recommendation, unless upon terms. This is very extraordinary, and the same argument would prove, that it is lawful for him to take money from every judge that comes into Westminster-hall. It is well known, that the Chancellor generally recommends in that case, and yet it might there be said, What is the public the worse, provided he is a good judge? Surely this is such a doctrine, as is not fit to be proclaimed to the world, and would tend to universal corruption.

My lords, there was a very extraordinary precedent cited out of Madox's History of the Exchequer, p. 43, where he says, in the reign of king Stephen, Geoffrey the Chancellor fined in 3,006*l.* 13*s.* 4*d.* for the king's seal. This the author understands to be a fine then lately made with the king for the office of Chancellor, or to have the keeping of the king's seal. The author himself observes, that this precedent may justly seem strange to us at this day. And truly so it may, for, in the instance before your lordships, instead of paying money to the crown for the office, here are very great sums of money paid by the crown for an acceptance of it.

But what does this precedent tend to? Is it to prove the office of Chancellor likewise saleable? This is so entirely new, that it wants a better authority than this precedent. It is a great while ago, if it were as the author takes it to be. But the same author, p. 42, says, that the ancient historians say little concerning the duty of Chancellor, or the nature of his office; and it does not appear what the business of his office was at that time, and nothing pertinent to the matter before your lordships is to be collected from it. It is very strange to suppose the common law, that is founded upon reason, should admit the highest place of judicature to be filled by those that come in by such corrupt methods. And therefore we must beg leave to insist that it was an offence at common law, as well as by the statutes.

But suppose this matter rested only upon the statute of Edward 6, I do not see but it is an offence and misdemeanor in his office of Chancellor to sell these places of Masters in Chancery, and that he is answerable for it before your lordships as a crime.

This statute is made against buying and selling of offices (for that is the title of the statute). And shall it not be an offence cognizable before your lordships, for a Chancellor to put in officers in a manner that is condemned by act of parliament? When he by virtue of the office is to appoint, it is a breach of his oath of office to appoint contrary to the laws and statutes of the kingdom; but more especially when he does it for corrupt gain.

As to this point, there is a great deal of difference between one officer selling to another, and a judge that presides in the court, whose duty it is to see that proper persons be appointed according to law; instead of that, by this method he shews them a bad example on their very admission into the office, and introduces them by corruption in the first instance, even by the very act of administering the oath to them.

If this great officer should be liable to no other punishment, than an incapacity of nominating again to the same office, the act would have little effect, and that penalty would signify very little; since his own office is during pleasure.

My lords, I shall now proceed to reply to the defence that has been made on the Thirteenth

and all the subsequent Articles, which is the province more particularly assigned to me.

The Charge in the Thirteenth Article is, that upon the failure of Dormer, instead of taking proper steps for obtaining a satisfaction by regular and justifiable methods, the earl of Macclesfield neglected and declined those methods, and by many indirect practices endeavoured to conceal the true state and condition of the office; lest a public discovery of the deficiency should lessen the unjust gains he proposed to make by the sale of the offices of Masters in Chancery.

Upon this Article the impeached lord has said, he thinks it hard that these miscarriages should be charged upon him; that this affair about Dormer was a misfortune that might have happened in any other Chancellor's time, and not his fault.

My lords, if this unfortunate lord had done what became him in his high station upon the failure of this Master, God forbid that the misfortune upon the office should any ways have been laid to his charge; if he had been desirous to have proceeded in a regular method, he might very easily have done it; the paths of virtue and justice would have been easy, he need not have found himself at the end of four years surrounded with such insuperable difficulties.

If a fair, plain, and open method had been taken for enquiring into, and stating the debt due to the suitors, and the account of Dormer's effects to satisfy it, there could have been no danger to the Chancellor, whatever the deficiency had been; but the truth was, he could not part with those vast and exorbitant prices, to which he had at that time raised the places of Masters; he found the sweet of that gain, and was willing to run some hazard for it.

Though it was known that Dormer was gone, yet the quantum of the deficiency was not known; and if it had been public, the money might probably have been taken out of the Master's hands; a parliamentary enquiry might have ensued, and he might have lost those exorbitant profits, which he afterwards actually made of those places; and these were the true reasons of the concealment, and of the clandestine proceeding that followed; nothing else hindered him from proceeding with safety to himself by regular orders of the Court. When orders of court are regularly made, there is a quick way of putting them in execution: It has been observed by the counsel in this case, that it is more expeditious against an officer of the Court than another; and it is certainly so. There might have been a sequestration against Dormer in a very little time, and that would have entitled the Court to the possession of his effects for the benefit of the suitors; which in a great measure answers what was objected of the necessity of Dormer's coming over, and having his liberty in order to transfer his stock. It was likewise said that it was necessary for the discovery of his effects; and yet when he did come over, he was never examined on interrogatories. Surely, if a Chancellor will take upon him to grant a man his liberty, when he is to make satisfaction to the suitors, he ought to take care that the consideration for the granting him his liberty should be performed.

But it is said, what harm has happened by not taking those methods?

My lords, here are two remarkable instances of the consequences of this neglect, by which it appears neither the debt to the suitors was known, nor the quantum of the effects that there were to pay it.

Mr. Edwards told your lordships, that the deficiency of Dormer was at first about 25,000*l.* but that about a month ago he discovered a farther debt of about 1,500*l.* Here there is a very great deficiency concealed: on the other side, the effects of Mr. Dormer, that should have gone towards paying this debt, have been concealed and lessened by the want of such an examination. Your lordships heard the evidence about the parcels of hops belonging to Dormer, that were worth 7 or 800*l.* that lay concealed four years, and were not discovered till lately. The counsel, indeed, said, they were only a parcel of musty hops that had been found. But if he had been examined on interrogatories, in all probability he would have discovered them at first, and they had been worth 5 or 600*l.* more than now, and the suitors would have had the benefit of them; 5 or 600*l.* is a considerable sum in Mr. Dormer's effects; and no one can tell but there might be other instances of the like kind.

What is the answer his lordship gives to this gross and wilful neglect? He tells your lordships, That he gave directions to the two senior Masters, to make enquiry into Dormer's affairs and accounts; he left it to them, and that they did not think it requisite to examine him upon interrogatories, or to use him with hardship.

It is very extraordinary, that in a matter of that great concern, he should content himself with a parol direction; orders from a Lord Chancellor, that are in earnest, are always in writing; nor can they be enforced unless they are so, and therefore there must be some private reasons for these extraordinary proceedings.

Another thing that was insisted on, was, That the Earl (as he expresses it in his Answer) was made to believe, that the Masters would make good the deficiency. What reason had he to believe it? They never told him so; in a matter of that moment, he had no reason to depend on an hear-say evidence. He knew this was to be an undertaking for the debt of another, which could not by law be obligatory, unless reduced into writing.

My lords, I cannot account for these things, either in the Chancellor, or those Masters that had the management of this affair, unless it be (as the Article charges) to conceal the deficiency of the office, I mean the quantum of that deficiency; and that both the Chancellor and the two senior Masters thought it their interest to

do so, that all of them might share in the sale of the places: the two senior Masters were desirous (as was mentioned by the evidence) to sell out, and the Chancellor was ready to receive his share of the money.

The Fourteenth Article is the Article about the composition with Wilson; and I must beg leave to say, notwithstanding what has been insisted upon, that it is a clandestine, unusual, and unwarrantable proceeding. We did take the liberty on our evidence to this Article to observe to your lordships, that the petition of Mr. Edwards (on which this composition is founded) takes notice that Dormer was indebted to the suitors of the Court in several considerable sums of money; which should have been a caution to the Chancellor to have taken a more than ordinary care in this matter; but instead of that, there is not any one order, affidavit, report, or any one proceeding, that appears upon record throughout this whole affair.

The report produced appeared to be the original under Mr. Hiccocks's hands, which was a demonstration that it was not filed at the time when the order was made for establishing this composition, nor has been since.

My lords, if there be but an affidavit annexed to a petition, care is usually taken to order that it shall be filed; but it was not thought convenient in this case to have any thing public.

My lords, the earl of Macclesfield, in his defence to this Article, began with a copy of a judgment obtained by Wilson against Poulter, that was signed 22d December, 1721, and is for 187,74*l.* whereas the debt pretended to be assigned by Wilson is 22,060*l.* So that though the judgment was for all that Wilson could pretend to (for aught appears) yet the debt pretended to be assigned, is mentioned to be above 3,000*l.* more than what the judgment is for; which is a farther objection to this composition that did not appear before.

The next point the Earl examined to, was the sufficiency of Poulter, in order to prove the assignment of Poulter's debt to be valuable; and there were two or three brokers produced on this account.

They were very unlucky witnesses to prove the man's ability, for they happened to be the very persons to whom he had declared his insolvency; one of them (Scott) was employed to go to Mr. Wilson to compound with him.

But then a very notable distinction was taken by the Earl himself, that though Poulter disclosed to these witnesses that he was insolvent, and that they were let into the secret; yet all other people took him to be a good man. The evidence produced to prove this, were only those that knew he was insolvent, and not one of all those others that it is said took him to be solvent.

But we hope we have made it plain (and if it were necessary, we could make it clear beyond dispute) that Poulter was a broken man at that time.

Another objection was, How does it appear that a better composition could have been made?

My lords, those that presume to take upon them, without a lawful authority, to make a composition to bind the parties concerned, ought to make it appear to be a very good one; but on the contrary it appeared in this case on the examination of Mr. Edwards, that Wilson (when he was afterwards charged with it) owned he had paid several others their full debts; and it is notorious that he kept his shop open till lately.

My lords, the answer to our objection, that no notice was given to the suitors of this reference about the composition, carried in it (I thought) something extraordinary. It was said both by the earl of Macclesfield and his counsel, that whatever the Lord Chancellor did, could not bind the suitors, they not having notice, and therefore the suitors might recover the whole from Wilson, and nobody was hurt.

My lords, there is something very shocking in this excuse; it strikes some horror to think, that this poor ignorant man (Wilson) should be made to believe upon the faith of a court of justice, that his composition was in full discharge of his debt, if there was at the same time a reserve, that it might be set aside for want of notice to the suitors; the excuse seems to carry in it a greater guilt than the crime charged. This unfortunate man (Wilson) was living at the beginning of this trial, but has since laid violent hands on himself, and he is dead: I make no reflection what might be the occasion of it.

My lords, I did mention that upon the absolute order made for Mr. Edwards accepting this composition, it was ordered to be accepted, with this addition to the order, viz. "Of which give notice forthwith." I mentioned it, that the Earl might have explained what he meant by directing notice after the composition was ordered to be accepted, or to whom notice was intended to be given; I have heard no answer to that, but what the Earl was pleased to say about the Articles, that on reading them, he thought he had been charged with compelling Mr. Edwards to accept of a composition without notice to him; whereas it was done on the petition of Edwards. My lords, the notice should have been given to the suitors, and that before the composition was ordered to be accepted; that is what the Article charges, and what the Managers insist on, and no answer is given to that objection.

It was said, That if it had been set down to be heard in the ordinary course (it being the third of August) in vacation time, it could not have come on till the next term.

I believe that lord knows it has very often happened, that particular petitions have been heard in vacation-time, if necessity required it; and I don't understand why there needed to be such a fondness for having this done so much in haste, unless it were for the purposes charged in the Articles. There was likewise something said by the Earl, of the striking out of the prayer of indemnification, that if it were justifiable, it needed no order to indemnify; and if it were not justifiable, it ought not to be in:

but what we say is, that it looks like a diffidence whether it was justifiable or not, and since it was put into the prayer of the petition, that Mr. Edwards might be indemnified; if the Chancellor thought it not justifiable, he ought to have let Mr. Edwards know it, as much as he ought to have let Mr. Wilson have known, that the composition would not be good without the suitors being parties. As there is no tolerable account given for such an extraordinary proceeding, we submit to your lordships, whether it is not rightly charged to be for the unlawful purposes mentioned in the Articles. If a commission of bankruptcy had been taken out against Wilson, the quantum of the debt to Dormer, and consequently of the loss of the suitors, must have been known, and other suitors might have been alarmed, and a thorough reformation might have happened, which might have ended in the taking away the money from the Masters, and the price of the places would have been lowered, which was always most carefully avoided.

My lords, I now proceed to reply to the Defence made on the Fifteenth, Sixteenth, and Seventeenth Articles.

The Fifteenth Article is, That after the failure of Dormer, the earl of Macclesfield, in order to carry on his corrupt and unjust purposes, and to conceal the deficiency, did call for the accounts of the Masters, not with any intent of examining them, or to secure their effects, but to terrify the Masters, and oblige them to contribute 500*l.* a-piece; and after that purpose was served, did not oblige them to bring in their accounts.

The Sixteenth is, That he persuaded the Masters to pay the 1,000*l.* ordered to Mrs. Chitty for the like purposes.

And the Seventeenth is, For letting all the money belonging to Dormer be paid away to some of the suitors, without observing a proportion, to which all were equally entitled.

To the Fifteenth, the earl of Macclesfield says in his Answer, That he did really call for the accompts with an intent to examine them, and that he might regulate matters, and that after the 500*l.* was paid, still he called for the accompts; for that there was a letter sent in November, 1721, to the Masters, insisting upon having them; but as to this second letter, as Mr. Cottingham did not speak at all positively to it, but that he believed, but could not be positive that it was sent, and that he had taken no memorandum of it, &c. we must beg leave to acquaint your lordships, that this second letter was never sent; and every one of the Masters will give your lordships that account: But supposing it had been sent, can any one imagine that the Chancellor would not have pursued that direction, and have had those accompts, if he had really intended it? What is the excuse at last? He had required so many particulars in the accompts, that it was almost impracticable to do it. My lords, if the charge in the Articles be true, it answered the design the better, that it should be difficult; we say it was done to get from the Masters 500*l.* a-piece to quiet matters for the present, and when that was done, there was no more use made of that order. But what is most wonderful of all is, that, though in four years time it was so difficult a work that it could not be done; yet, when the committee of council had called for the accompts, the earl of Macclesfield used such diligence, that he procured them to be ready in a week's time; and though all the directions and particulars which he had required, were not observed, yet it seems they were all that were necessary and sufficient, and it was hoped such as would prevent a parliamentary enquiry.

The Earl in his Answer values himself much upon this expedition, not considering how inconsistent it was with the difficulties which were made an excuse for not having it done four years before.

It was insisted on, upon this head, that Mr. Lightboun did not pay, and yet he brought in no account; but however, nine of the Masters did pay, and the Chancellor well knew it would have looked very partial to have proceeded against one single Master, and not the rest; that would have been too bare-faced, and so Mr. Lightboun escaped too; besides, there was not a total despair even of him, for he was several times afterwards spoken to about making good his 500*l.*

It was said likewise, the business of the Court must have been at a stand, if these accompts had been pursued.

My lords, if it had been so, it had been more for the reputation of the Court, and for the benefit of the suitors in general, to have had some time employed about this necessary work; and if there had been a willing mind, one long vacation would have been sufficient without any interruption to the business of the Court.

After all these excuses the Earl is pleased to say, if he had taken the accompts, it would have signified nothing unless he went farther.

My lords, if he never begun, he could never bring any thing to perfection; and in his Answer he confesses it was necessary to have the accompts in order to make regulations. But after all he is forced to come to this conclusion (as he says in his Answer) to go on in the same road his predecessors had done; though, by the way, it has appeared to your lordships, that it is not the same road; for his two immediate predecessors did call for the accompts, and had them.

The Sixteenth Article is grounded on the persuasions to pay 1,000*l.* (ordered to Mrs. Chitty) to prevent a parliamentary or public enquiry, and that the Earl afterwards paid the same himself to Mr. Lockman, &c.

My lords, we called six or seven witnesses to this Article, and did observe at that time the Earl in his Answer said, He believed he did not persuade the Masters to pay this 1,000*l.* And his lordship was pleased to say, when he

spoke in his Defence, that he still believed, that he did not persuade them to pay it.

My lords, it is very strange that there should be any doubt made of it; the occasion of the meeting, and the nature of the thing plainly shews it. First Mr. Cottingham went to Mr. Lightboun, and told him, that there was a present occasion for this 1,000*l.* that it was proposed he should pay the 500*l.* (which he should have paid before) and the other Masters 50*l.* a-piece, which would make up the 1,000*l.* When the Masters were going to the Lord Chancellor's, they discoursed among themselves, that their going was upon occasion of another call for money.

When the Chancellor came to them, he mentioned the pressing necessity there was for paying this 1,000*l.*

Mr. Edwards particularly says, that he represented to them this matter of 1,000*l.* as a thing of consequence, a very pressing occasion of a sum of money immediately to be paid; he said, I do not know what the consequence may be; clamours begin to grow strong. I do not know but it may come to a parliamentary enquiry. Mr. Lovibond says, that my lord told them, This was a matter that required great expedition, for one that belonged to the prince's court, and all of them understood there was a proposal to pay the 1,000*l.* and that was the occasion of the meeting. All the Masters that have been examined on this head confirm it.

What is it that is to evade all this evidence? It is only this poor shift, I did not (says the noble lord) persuade them to pay the 1,000*l.* but I persuaded them to pay all Dormer's deficiency.

My lords, there is no evidence to support this distinction, but, on the contrary, there were arguments used for the advancing of this money. And if he was not able to persuade them to pay this 1,000*l.* there was no likelihood of prevailing on them to pay the whole.

My lords, another matter insisted on in relation to this Article was, that the money which was paid to Lockman, was paid out of compassion; Lockman says he took it as his due, and I think he was in the right; he gave an assignment of the order, when it was paid; and certainly this can in no sort be added to the list of this noble lord's charities, that he has been pleased to publish; but the discourse with the Masters before shews plainly what were his inducements for paying it; he feared the consequence if it were not paid, and chose rather to do it, than venture those enquiries that the not paying it might occasion.

I think the Earl seems to agree, in substance, to the declaration at the end of the Articles, that was made the 5th of December last, viz. that he had heard of Dormer's deficiency, but knew nothing of it but as public news, &c. A strange declaration to come from the bench at the end of four years, during which time were all these transactions about Dormer's deficiency! Then it was that he was pleased to refer it to Mr. Edwards, to enquire whether there was likely to be a loss of any money, when at that time he knew very well that all Dormer's money was gone, and Mr. Edwards had none in his hands.

The Seventeenth Article is for ordering and permitting Dormer's money to be paid out without regard to proportion; this was a manifest injustice, and so discoursed of between this lord himself and Mr. Edwards; and the answer that is given to it, is, that we have produced but four orders made by the impeached lord for such payments.

My lords, I think it not material whether the orders were made by himself, or the Court; he was warned several times of the consequence; he took the management of these matters to himself, and let things run on, hoping the money would last his time; and now all is gone, and paid away, and many distressed people are left without any thing. In the cause of Jett and Jones, the orders that were read, appeared to be made by this lord himself; and the parties have been so lucky as to have got their whole money, whilst others are in the utmost necessity without any subsistance.

The consequence is, that the rest of the suitors, who were entitled to an equal proportion, have no remedy for it. What may be done for them in charity and compassion is of another consideration; but their legal right is taken away by him that should have protected them.

An objection was made by the counsel, that there was no fixed fund of Dormer's effects, from which to have settled a rule of proportion. This is excusing one fault by another: first, care is taken not to have an accompt settled; and then that is made an excuse for not settling a proportion.

The Eighteenth Article relates to the Masters trafficking with the money; which was as notorious, as that there was such a place as Exchange-Alley.

The year 1720 has been mentioned both by the Earl and his counsel, and it was so fatal a year, that surely, if a reformation were ever to be made, it should have been upon that occasion. I think there is but little difference, whether they traded with the money themselves, or put it into another's hands at high interest, and permitted them to trade with it. Could any one imagine that Dormer let 24,000*l.* lie in Wilson's hands for nothing? Mr. Cottingham, upon the examination of my lord's own counsel, gave evidence, that Wilson insisted he allowed high interest for it. And it was well known it was in the power of all the Masters to traffic with the money, and this after express warning by one of the Masters to the Chancellor not only by word of mouth, but by letter written (as I take it) in 1722. But every thing of a regulation of that kind was liable to objection: one thing that was proposed was so easy to be done, that there is no excuse it was not complied with, which is in relation to the securities, by placing

them in two or three names, which would have prevented the Masters from disposing of the securities.

This might very easily have been done. The only answer that was given, was, that it would not answer all the securities.

This was made a reason for doing of nothing, and there was such a backwardness to do any thing of this kind, that the meanest and most trifling excuse was sufficient to satisfy his lordship, not to take any step towards it.

My lords, upon this Article the impeached lord was pleased to mention some of his predecessors, and also his successors: as to his two immediate predecessors, he doubts the taking the accompts by him in the manner they did, would have been thought of no use.

My lords, I am apt to believe a good use might have been made of it; it would have put a check and restraint upon the Masters, they would have acted with more caution, when they knew the balance was a charge upon them, and that it might be called for at any time; and if his lordship had those accompts, I dare say he would have seen that there was ten times as much cash in the Masters' disposal, as there was in one of those predecessors' time. And it might have been of use to him to have seen what prodigious sums of money were in their hands, and how great the danger was.

As to the present commissioners, the noble lord was pleased to say, the difficulties of making the Masters accompt have appeared by their proceedings.

My lords, they have been sufficiently taken up with endeavouring to compel the Masters to give security for the deficiencies incurred in this lord's time. The difficulty was not so much in taking an accompt, as in making good the deficiency.

They have been forced to take what security they could get from the Masters from time to time, and I wish the deficiency do not still come out worse than is expected; no one can yet say what it will be.

My lords, the 19th Article was founded on the endeavours of the lord impeached, to deceive his majesty in council, by persuading the Masters to make false representations of their circumstances to his majesty, by a subscription to their accompts, and by assisting one another to make an appearance of ability.

This, my lords, was the sad conclusion of this long scene of iniquity; when it was become necessary, and it was no longer to be avoided, that there should be accompts delivered in. There is an attendance on the Chancellor; and one of the Masters having concluded his accompt with a representation of his ability and readiness to pay the money, the rest are persuaded to do it in the like manner, without so much as asking them concerning the truth of it; and there is one instance that was very remarkable, which was in the case of Mr. Lovibond, that where he, of his own accord, could go no farther than to say he was able to pay or give security to pay; that was not thought sufficient by this lord, because it would imply a diffidence that the money was not then forthcoming; and therefore those words about security were not to be mentioned. Others of them that were no ways capable of producing the money, were induced to make the like subscription.

When it was expected the money should be produced, then Mr. Dixon and Mr. Cottingham have a meeting with the Masters to consult what was to be done; then it was that proposals were made for the Masters to assist each other, and to get goldsmiths' notes and other effects to shew to the judges.

It has been objected, that the Managers did not think fit to call Mr. Cottingham and Mr. Dixon.

My lords, we called the Masters that were present at that meeting, who gave your lordships an account of that transaction, and it turns the objection upon the impeached lord, that he did not think fit to call Mr. Cottingham and Mr. Dixon (that were his servants and agents) to contradict that evidence; if this lord had no concern in that matter, he would certainly have called them to that purpose, and his not examining them to it, greatly confirms our evidence.

Your lordships may remember the many inconsistencies, evasions, equivocations, and insufficiencies in his lordship's Answer to the Articles of Impeachment, which have been observed and plainly made out by the Managers for the Commons.

My lords, he was pleased to make a distinction between an Answer to Articles of Impeachment, and an Answer to a Bill in Chancery; that the plaintiff in a cause had a right to a full and plain discovery, but that the case before your lordships differs. My lords, I would beg leave to mention, that there was an instance of an Impeachment before your lordships, in which the lord now impeached had a great share in the Reply, wherein he laid very great stress upon the insufficiency and evasions in the Answer. The person then impeached had very hard names given to him on that account, and even his silence was insisted on as a confession of his crimes.

As to the noble lord's charities, I beg leave to say, that, as it is a great addition to the merit of charity, to have it kept private, it was the more extraordinary these charities should be now published; because I do not see they are any ways material to the matters before your lordships. Here are plain facts charged and proved, and if in a case of this kind these charities are to wipe off the Charge, it is a kind of commutation that has not been before heard of. My lords, he that would be the most meritoriously charitable, should first be just. The lord should have first considered those suitors that he had injured; he should first have made satisfaction to them, and then have offered his gifts.

Thus we have endeavoured to lay before your lordships the whole circumstances of this

case: there needs no eloquence to aggravate the crimes; I pretend to none; but the cries of widows and orphans will have the most persuasive eloquence, and when they have justice on their side, they will have weight with your lordships.

My lords, the case before your lordships is founded on corruption, and a series of fraud to support that corruption. The people had long murmured at it, but the grievance encreased at last to such an intolerable degree, that it became a national concern, and there was an unavoidable necessity of a parliamentary prosecution.

My lords, the Commons hope they have done their duty in bringing it here, and we hope your lordships will give such judgment as will be consistent with your lordships' honour and justice.

Serj. *Pengelly.* My lords, we shall beg leave to call a witness or two; the first to the imputation endeavoured to be thrown upon Mr. Thomas Bennet's character, in relation to the discourse that passed between him and the Earl. We shall shew that he declared it at that very time, or soon after the lord had spoke it to him. We desire also to examine Mr. Lucas, who applied for the Master's place. It was insisted, that the Earl was offered 6,000*l.* and actually refused to take it; but took 5,000*l.* from Mr. Elde and Mr. Thurston for the Master's office: we shall shew how that happened.

Mr. *Richard Lucas* sworn.

Serj. *Pengelly.* We desire that you would inform my lords, whether you made any application to the earl of Macclesfield, or to Mr. Cottingham, about coming into the Masters' office at the time when Mr. Elde or Mr. Thurston were admitted, and what passed?

R. Lucas. My lords, upon the death of Mr. Fellowes, being persuaded by some friends to make an application for the office vacant by his death, I did go immediately to Mr. Cottingham; my lord Macclesfield being then out of town, I thought it proper to go to his secretary.

L. C. J. *King.* Please to speak up.

R. Lucas. I say, upon the death of Mr. Fellowes, I was persuaded by some friends to make application for the Master's place: and upon that, I went to Mr. Cottingham, and told him the affair I came about. He told me, Mr. Lucas, you know you have formerly had some talk with me about an affair of this nature; it is to no purpose for me to recommend you to my lord, unless you bid more than formerly you have done. Upon that I immediately told him, I was ready to give 6,000*l.* There was some talk passed between us besides, but it being so long ago, and not expecting to be called to give an account of it, I cannot now recollect it. One thing I can recollect that he intimated to me, that my lord Macclesfield had some intentions of making some orders, or doing somewhat that should be for the ease or advantage of the Masters; but his lordship would not do it that time, because it would look as if he had an intention of making advantage of that vacancy. A day or two afterwards I met Mr. Cottingham in the hall, and asked him, If he had spoken to my lord about me? He told me he had; but that my lord was pleased to enquire into my circumstances, and did think it proper that some security should be given by the Masters; and I being immediately to be put in by his lordship, it was the more incumbent upon him to see what security I was able to give. Upon that I waited upon him to know what security was expected: he mentioned to me 10,000*l.* security. I told him, that after such time as I had parted with 6,000*l.* I could not take upon me to say, I could myself make up a security to the value of 10,000*l.* but what with the assistance of friends, and mine own estate, I might possibly do it. Upon talking of the matter with my mother, she was very willing to join in the security. Upon that I wrote a letter, I cannot remember whether it was directed to my lord Macclesfield, or to his secretary; but to one or the other it was. I sent it by my servant, and I was informed by Mr. Cottingham, that his lordship had a sight of it. But afterwards being uneasy at giving so large a sum of money, and considering from the talk that then was, that these matters might come into parliament, I was advised, and I thought it proper, to have some better hold upon his lordship, to make some return, in case any thing should happen to lessen the value of the place: upon that, I did write a letter, I cannot remember the whole contents; but I pretty well remember the substance, which was, that I would undertake to give the security required to the amount of 10,000*l.* I believe, I did also mention my real estate, which was near 300*l.* a year, to be a part of the security, and I did add, that notwithstanding the present disputes between the Master of the Rolls and the other Masters, and the talk there was of bringing it into parliament, I was not at all uneasy; because I could securely depend upon his lordship's generosity, that he would take it into his consideration, in case any thing happened amiss in the next session of parliament; I can't remember exactly the words, but my lord Macclesfield has the letter; if I am mistaken, his lordship will set me right.

Serj. *Pengelly.* Upon this letter of your expectation of being repaired, if any thing happened, had you any answer?

R. Lucas. The next thing I heard, was, that Mr. Elde was in the place, and Mr. Cottingham was pleased to say, he was a particular acquaintance of my lord's, and therefore had it.

Serj. *Pengelly.* When Mr. Cottingham told you this, what answer did he return as to my lord's approbation of the proposal?

R. Lucas. He said, to the best of my remembrance, that my lord was pleased that I offered 6,000*l.* at once, provided I would give security, if that should be thought proper,

Serj. *Pengelly.* Since you were disappointed when Mr. Elde came in, what passed when Mr. Thurston came in? Whether did you renew your application then?

R. Lucas. I was, with abundance of regret and fear, prevailed upon to renew my application.

Serj. *Pengelly.* What were your fears?

R. Lucas. My fear was about the bringing this matter into parliament, and that I did not know what effect that might have upon the profits of the place. Upon that, my brother told me, he was acquainted with Mr. Ellis, his lordship's chaplain, and, if I pleased, he would go to him, and get him to speak to my lord about it.

Serj. *Pengelly.* What directions did you give to your brother as to offering any thing, and upon what terms?

R. Lucas. I cannot say whether my brother had a direct commission from me to mention that I was then ready to give 6,000*l.* but it was my apprehension, and the apprehension of all those that knew this affair, that I should not come in under so much; I am not very positive that such a direction was given. I did mention another thing to my brother, to acquaint Mr. Ellis, that I had heard more of the deficiencies in the several offices of the Masters, and that I was not without apprehension, that if I should give 6,000*l.* to come into this place, I might from time to time be called upon for several sums of money in order to make good past deficiencies; and I thought that it would be unreasonable for me to be brought into any contribution for making good those deficiencies, when I had no concern in them. I then desired it might be mentioned. As for the answer, I never saw Mr. Ellis.

Serj. *Pengelly.* What orders did you give to your brother? Did you give him any order to pay the money without consideration of being liable to the deficiencies?

R. Lucas. I gave him no order at all, I thought it was not come to bear yet.

Serj. *Pengelly.* Was there any thing passed after that?

R. Lucas. I conceive, my lords, you won't think it proper for me to give an account of what passed between Mr. Ellis and my brother.

Serj. *Pengelly.* I desire to know, whether your brother had any orders and directions from you to go on?

R. Lucas. I have told you every thing I can recollect; I only told him, I desired him to speak to Mr. Ellis to recommend me to his lordship, upon the foot I have mentioned, viz. on the foot of the former proposals.

Serj. *Pengelly.* Had your brother any authority from you to give 6,000*l.* without being secured from the deficiencies?

R. Lucas. 6,000*l.* was the sum to be given, and I desired my brother to mention the deficiencies, and that I should not be understood to be subject to any of them.

Serj. *Pengelly.* Was it to be given absolutely without reserve, or with regard to be secured from the deficiencies?

R. Lucas. I did desire that the business of the deficiency might be explained, and that it might be understood that I would not be answerable for any of them.

Mr. *Edward Lucas* sworn.

Serj. *Pengelly.* I desire you would inform my lords, whether you received any, and what directions from your brother, upon the last vacancy, when Mr. Thurston came in, of the making proposals for your brother's coming into that office?

E. Lucas. Soon after Mr. Borret's death, my brother expressed an inclination to me of succeeding in that office: I told him, I had an acquaintance with Mr. Ellis, my lord Macclesfield's chaplain; and if he would give me any commission, I would communicate it to Mr. Ellis, I believing that a proper way of communicating it to my lord. My brother did desire me to go to Mr. Ellis, and to inform him myself, that he had so just a sense of my lord's honour and generosity, that he believed he might leave the terms to be fixed by my lord himself. I went to Mr. Ellis, and did tell him as my brother had desired me. Mr. Ellis said, He did not much care to concern himself in the affair; if it had been to recommend to a living, it might be proper for him; but this was out of his province. I acquainted him with what steps my brother had formerly taken, in order to obtain one of these offices, and explained to him the nature of the thing, and persuaded him to lay this matter before his lordship. Upon which he was then pleased to say, He would go to my lord (who was at Kensington) the next day, and bring me an answer.

Serj. *Pengelly.* Had he any directions either as to the price, or the terms?

E. Lucas. I don't know of any directions he had, either as to the price, or the terms.

Serj. *Pengelly.* What did you say about the security, and the deficiencies in the several offices?

E. Lucas. This was another conversation, about a week or ten days after; after Mr. Ellis had brought me an answer, then I remember my brother gave me directions to consult with Mr. Ellis, whether it was not proper to make my lord a direct offer of 6,000*l.* but then it would be reasonable, that he should be indemnified or secured from any damage, or deficiency by any of the precedent Masters; and that he should not be called upon to make good any such deficiency. I told Mr. Ellis this, and he said, there was no room for this, there might be deficiencies in some other of the offices, but he had heard there was no deficiency in Mr. Borret's office. I had likewise heard so, but whether there was a deficiency or not, I could not tell; my brother was willing to enter into a treaty with my lord upon these terms.

Serj. *Pengelly.* Did you hear any thing more about it?

E. Lucas. About a week after, Mr. Ellis writ to me, that my lord Macclesfield had approved of Mr. Thurston.

Serj. *Pengelly.* Please to recollect, whether your direction was about Borret's deficiency only, or about all the deficiencies in general?

E. Lucas. My directions from my brother were about all the deficiencies; Dormer's deficiency ran in his head, and he thought it unreasonable, that he should be obliged to contribute to any deficiency precedent to his coming in Master.

Serj. *Pengelly.* Did you communicate this to Mr. Ellis?

E. Lucas. I did communicate it to Mr. Ellis; if not in such express terms, yet to that effect, that it was unreasonable that my brother should be obliged to contribute to make up those deficiencies that were precedent to his being Master; I am sure I added those words, that he should not be obliged to contribute to make up those deficiencies that were precedent to his being Master.

E. of *Macc.* My lords, I submit, whether it be not proper, that Mr. Ellis be called before this Mr. Lucas goes away. [Mr. Ellis called, but not examined again immediately.]

E. of *Macc.* Mr. Lucas, I desire that you would declare to my lords over again, what you have given in evidence.

E. Lucas. The first time I saw Mr. Ellis was at my mother's house, immediately after Mr. Borret's death. I then told him of my brother's intention to purchase a Master's place, and that my brother had so thorough a sense of my lord's honour and generosity, that he would leave the terms to my lord himself. Mr. Ellis was not at first inclinable to concern himself in it, but upon telling him what steps my brother had taken in regard to it; he said, out of friendship to me, he would engage in it, and go to my lord, and bring me an answer. This was the first conversation. Mr. Ellis did the next day bring me an answer from my lord.

Serj. *Pengelly.* What was the answer my lord sent?

E. Lucas. The answer that Mr. Ellis brought was, that my lord had no objection to my brother; he did remember, that he had been formerly recommended to him, but that there was some other person proposed by some of the Masters, of whom he expected a farther recommendation, and could not now give any other answer to it: he also told me, that he apprehended, if that person did not succeed, my brother might have the refusal. I said, it was indifferent whether my brother then succeeded or not; because my lord told him, that one or two Masters were inclinable to sell, and if they did, he might have an opportunity of buying of those Masters. This passed on the second conversation.

Serj. *Pengelly.* Go on.

E. Lucas. The third conversation was some time afterwards at my lord Macclesfield's own house in Lincoln's-inn-fields. I went by my brother's directions, meaning to consult with Mr. Ellis in a friendly manner, whether he did think it advisable to make his lordship a direct offer of 6,000*l.* I said, if he gave it, it was reasonable that he should be indemnified from any damage that should happen by reason of the deficiency in any of the offices, and not be obliged to contribute towards making them up; he said my lord had not spoken to him about that, that he could not have every opportunity he desired to speak with him; that as to the deficiencies, he had heard there were none. I said, I had likewise heard so; but whether there were or no, my brother was willing to enter into a treaty with my lord upon those terms. This, to the best of my remembrance, is the whole I know of the matter.

Serj. *Probyn.* I would only beg leave to ask this question, when the first proposal was made to Mr. Ellis, whether he did propose a certain sum?

E. Lucas. I don't remember I did; but I think I told Mr. Ellis my brother had formerly offered 6,000*l.* and I told Mr. Ellis this, and did lay before him all the circumstances of that affair, to make him the more inclinable to engage in it.

Com. Serj. I desire he may be asked, whether any terms were mentioned besides what Mr. Lucas has mentioned before?

E. Lucas. I don't remember there were any other directions then given, I can't be positive, but that he was willing to leave it to my lord's honour and generosity. And, my lords, I can swear positively, that till the first day of these proceedings, when I met Mr. Ellis in the Court of Requests, I never knew that he had offered my lord Macclesfield 6,000*l.*

E. of *Macc.* My lords, we beg leave that Mr. Ellis may give an account of what proposal he made to me from Mr. Lucas.

Ellis. My lords, the account Mr. Lucas has given your lordships, is true in all the particulars, as far as I can remember at this distance of time, though there are a good many that I could not have recollected of myself, only as to this one, his not empowering me to offer this 6,000*l.* I should not have gone to my lord, unless I had had some particular offer to mention. I particularly remember I made him that offer, and I am as certain, that Mr. Lucas did speak to me to make the offer of 6,000*l.* for this reason, that I never knew that Mr. Lucas had offered 6,000*l.* before by Mr. Cottingham, till this impeachment began, when Mr. Lucas, being here, acquainted me, that he had made that offer to my lord.

E. Lucas. I desire Mr. Ellis may be asked, whether ever he told me, that he offered lord Macclesfield 6,000*l.*?

Ellis. I believe I only did tell him in general, that I had made his lordship the offer which he had desired me to make, and in general, likewise, that my lord was well satisfied with it.

Com. Serj. I desire he may inform your lordships, whether, when he told Mr. Lucas, that he had made that offer which he had desired him, he did enquire what that offer was?

Ellis. No, my lords, he did not.

Serj. *Pengelly.* My lords, they have called

Mr. Ellis to confront Mr. Lucas; but they agree together in all the material circumstances, Mr. Ellis says, what Mr. Lucas swears is true in every particular, unless in relation to the offer of 6,000*l.* In all the rest Mr. Ellis confirms Mr. Lucas's evidence.

E. Lucas. I don't positively swear that I did not give him that commission, but to the best of my remembrance, I did not give him that commission.

E. of Macc. I desire Mr. Ellis may be asked, when he made the proposal to me, whether he mentioned any condition whatsoever?

Ellis. No, my lords, I did not mention any condition.

E. Lucas. Till after the first conversation with Mr. Ellis, I had no direction from my brother to mention any price or condition; I gave an account to your lordships of two different conversations.

E. of Macc. When the answer was brought, that I was satisfied with the proposal, what did he do farther upon it?

E. Lucas. My lords, Mr. Ellis did not tell me, that my lord Macclesfield was satisfied with the proposal, but that my lord Macclesfield had no objection to my brother, and he had formerly received a recommendation of him; but at present another person was recommended by some of the Masters, whom he expected to be further recommended.

Mr. *Plummer.* My lords, I desire Mr. Ellis may be asked, how long, before Mr. Thurston was admitted, was the conversation about giving security, that Mr. Lucas might be indemnified from the deficiencies?

Ellis. My lords, in one of the last conversations, which was after I had spoken to my lord Macclesfield, Mr. Lucas might say something about having security. But I don't recollect it with any certainty; if he did, it was some days before Mr. Thurston was admitted.

Serj. *Probyn.* I desire he may inform your lordships, whether he ever told my lord Macclesfield any thing of this discourse about security?—*Ellis.* No.

Sir *Geo. Oxenden.* He says he never told my lord Macclesfield of that conversation: I desire to know if he told my lord Parker?

Ellis. No, my lords, I told nobody at all.

Mr. *Strange.* My lords, I beg leave to make one observation; a learned manager was pleased to observe upon the appearance of these two witnesses together, that now the evidence of Mr. Lucas is confirmed by Mr. Ellis: Your lordships are pleased to remember, that Mr. Ellis was our witness, and was first examined; and therefore I should apprehend the observation may be turned much properer the other way: That the evidence of Mr. Ellis, who was our witness, and was first examined, is now confirmed by Mr. Lucas.

E. of Macc. My lords, I desire he may inform your lordships with relation to the discourse that passed betwixt them about the deficiencies; whether the objection did not relate singly to them?

Ellis. I don't well remember what passed upon the subject of the deficiencies; what I have said to your lordships before, I remember full well, because a particular circumstance made me recollect, that Mr. Lucas did say, he had heard there was no deficiency in Mr. Borret's office; which I had heard too; but at what time that discourse was, I can't recollect; it might be as he represented it.

E. of Macc. Mr. Lucas said to you, that he was willing to treat upon those terms?

E. Lucas. Upon those terms, or to that effect, I did say.

Mr. *Plummer.* I would only make this observation; both these evidences confirm this, that Mr. Lucas was an inquisitive man, and would not part with his 6,000*l.* so easily as to ask no questions.

Serj. *Pengelly.* We beg leave now to call a witness as to the second letter or order, supposed to be sent in November, 1721, to all the Masters. Mr. Cottingham could not take upon himself to say, that it was delivered; he had kept a memorandum of the first, but none of that, and he believed he might say it was delivered; we deny any such letter was delivered, and beg leave to ask as to that particular point.

Mr. *John Bennet* called.

Serj. *Pengelly.* I desire he may be asked, whether in November, 1721, any second letter or order, of the purport of the first order, was sent or delivered, in relation to the Masters bringing in their accompts?

J. Bennet. My lords, I never saw any such letter.

Serj. *Pengelly.* Did you ever hear of it?

J. Bennet. I never heard of it before, till I heard Mr. Cottingham read it at the bar.

Serj. *Pengelly.* Did you receive any account from the other Masters, that they had received any such letter?

J. Bennet. No, my lords, never.

Serj. *Pengelly.* Do you recollect any discourse between my lord Macclesfield and your brother, relating to your brother's account?

J. Bennet. I don't recollect the whole.

Serj. *Pengelly.* What do you recollect?

J. Bennet. My lord hath declared to me, that he wondered Mr. Kynaston and my brother should put such an item in their accompts, which would make a discovery, that the Masters had bought their places with the money of the Court, which might be of mischievous consequence; that whenever it was objected to him, he had always taken great pains to deny it.

Serj. *Pengelly.* When was this? About what time?

J. Bennet. About Christmas last.

Serj. *Probyn.* We beg leave to take notice of the nature of this evidence, that it is very improper now, being new evidence; not to the same purpose to support what was given before, but new matter, and therefore not proper.

Mr. *Lutwyche.* We apprehend it is very proper, because Mr. Thomas Bennet was objected to, and this confirms his evidence.

Mr. *Holford* called.

Serj. *Pengelly.* My lords, we desire he may be asked, whether this letter, or order, of November 1721, was ever communicated to him by Mr. Cottingham?

Holford. No, my lords, I never heard of it till now lately.

Com. Serj. I desire Mr. Holford would inform your lordships, whether there were not then several Masters senior to him; and whether it is not usual to leave those letters, or orders, with the senior Masters?

Holford. I don't know that such order, or letter, was left at that time. Mr. Hiccocks and Mr. Fellowes were seniors to me.

Com. Serj. I desire he may be asked the other part of the question, whether it is not usual to leave orders, wherein the Masters are generally concerned, with the senior Masters?

Holford. It is not; but the usage generally is to be left at the public office. It might be left with the senior Master, for aught I know.

Mr. *Lovibond* called.

Serj. *Pengelly.* Did you ever hear or know of this letter or order of Nov. 1721?

Lovibond. I never heard of any such letter or order, till I heard it read at this bar.

Mr. *Kynaston* called.

Serj. *Pengelly.* Mr. Kynaston, will you give my lords an account, whether you heard of this letter or order of November 1721?

Kynaston. I suppose you mean the letter which Mr. Cottingham read.

Serj. *Pengelly.* The same.

Kynaston. I never heard of it, till I heard it read at this bar.

Serj. *Pengelly.* I hope this will explain Mr. Cottingham's want of memory, when he said that he could not remember it.

Mr. *Lightboun* called.

Serj. *Pengelly.* I desire to ask you, whether you know any thing of this letter of November 1721?

Lightboun. I never heard of it, till I heard it at your lordships' bar from Mr. Cottingham.

Mr. *Edwards* called.

Serj. *Pengelly.* I desire he may be asked, whether he ever heard of this letter of November 1721?

Edwards. I never heard of such a letter, till I heard it mentioned at this bar.

Serj. *Pengelly.* So that, my lords, we apprehend this letter, when written by Mr. Cottingham, was a pocket-letter to be made use of on any proper occasion. The Managers have done with their evidence and the witnesses; they shall call no more. We humbly apprehend, that we have cleared up the reason, why the lord took 5,000*l.* rather than 6,000*l.* It was from hopes of greater gain in having 5,000*l.* absolutely, without being liable to refund, than 6,000*l.* liable to such a contingency. Upon the evidence we submit the whole matter to your lordships' determination.

Serj. *Probyn.* My lords, we will be short in our reflections upon this new evidence. We apprehend their evidence proves, what was insisted upon by us, that there was care taken in disposing of these offices, and that my lord Macclesfield having personal knowledge of one gentleman did prefer him before another, whom he did not know, though he had less money from him, than he could have had of the other. It is agreed by Mr. Lucas and his brother, that there was a proposal of 6,000*l.* made upon this occasion: Mr. Ellis tells you, Mr. Lucas gave him orders to propose it to my lord Macclesfield without any terms whatsoever: he never mentioned any terms, or intimated any condition or restriction to my lord Macclesfield. Upon that his lordship was pleased to direct a proper enquiry to be made, what security he was able to give for the discharge of his office; here there was 6,000*l.* proposed without any terms by one whom he did not know; but he preferred another whom he did know to be well qualified, for 5,000*l.* This doth not shew any neglect in the noble Earl; but all the care and caution that ever could be taken; and this shews that the Earl could not do this out of an immoderate desire of gain, when 6,000*l.* was proposed to be given; but he preferred another whom he knew to be well qualified for less money; so that we apprehend this is an evidence which is much in favour of the Earl. As to the other matter, the Masters not knowing of this letter, your lordships observe what evidence was given by Mr. Cottingham. This is a transaction some time ago; he says that he writ this letter by the noble lord's order, that he cannot now say to which of the Masters he delivered it, or whether it was personally delivered by him, or by one of his clerks. Your lordships will observe, that there were two Masters senior to Mr. Holford, viz. Mr. Hiccocks and Mr. Fellowes; and it might probably be delivered to one of them; one of them is since dead, the other is yet living; but we were not aware of the objection, and so have not him here. This doth not impeach Mr. Cottingham's credit or his evidence, so far as it concerns the Earl.

Com. Serj. My lords, I will not enter into a strict comparing of the evidence; we apprehend that what Mr. Ellis swore stands confirmed in every thing by Mr. Lucas, and we have reason to thank the gentlemen of the House of Commons for this evidence. There was one material part of our evidence, that the Earl had a thorough intention of entering into the regulation of those matters; but by disputes arising in relation to the jurisdiction of the Master of the Rolls, he was hindered.

Now the evidence of Mr. Lucas corroborates our proof on this head; he saith, that Mr. Cottingham told him, though security had not been taken, yet at present the noble lord had a reformation in view, and security would be ta-

pected; and therefore he enquired what security he could give; there was not only an enquiry into his present circumstances, but likewise an intimation that security would be expected. This shews the Earl's intention; and if the thirst of gain had swayed him, Mr. Lucas would never have had those bugbears to affright him from giving so much money. Upon the whole, it appears that no part of our evidence is any way impeached by the new evidence they have given.

E. of *Macc.* My lords, I beg leave to say a very few words upon what hath been newly offered, as to the evidence to take off my having preferred 5,000 guineas with a person I thought a better man, to 6,000*l.* with another, whom I thought a good man. I apprehend it is not taken off at all by any thing that has yet been offered. Mr. Lucas owns that at the first time there was an expectation of security, and he has given your lordships an account that he asked what security was expected; and was answered I think to the value of 10,000*l.* and that what he spoke of the deficiency, was only that he should not be liable to farther orders to be made upon him for contribution to the former deficiencies of other Masters; and in the latter time, when the clamour was greater, Mr. Ellis offered me 6,000*l.* absolutely without any condition, and I said I approved of the person and of the offer, but I had another gentleman then under consideration. Their evidence indeed varies as to the particulars of the conversations they had upon this subject: but whatever discourse passed between them, unless it came to my knowledge, it ought not to affect me. I never heard, nor is it so much as pretended, that I ever did hear, there were any manner of terms or conditions whatsoever annexed to the proposal made by Mr. Lucas.

Mr. Ellis has been asked this question, and has sworn positively he mentioned none at all to me; so that there is not the least pretence that the restriction, supposing Mr. Lucas annexed any to the proposal (which I must observe is flatly contradicted by Mr. Ellis's evidence) ever came to my knowledge.

As to what evidence is given in relation to the letter of November 1721; your lordships will remember, that when I spoke of that, I entered upon it as a thing not at all necessary for me; because they had not proved the Article, that the letter writ in February was with an intention to terrify the Masters into a contribution; but all the proof they produced was, that the Masters had paid a voluntary contribution, and upon that they made some observation; but not one of the Masters ever gave your lordships an account that they did it by reason, or under the terror of this letter; they have called every one of them, and not one hath said so, but agreed that they had paid it as a voluntary contribution; so that there is no manner of occasion for what hath been said about this letter. Mr. Cottingham did say before your lordships, that he thought the letter was sent, and he had no reason to believe the contrary; but indeed he had no memorandum of its being sent. It is very extraordinary to suggest, that this should be a pocket letter. Can any person imagine that that letter was calculated for an occasion like this? Was there any apprehension of this prosecution in 1721? My lords, it is not worth while to trouble your lordships with any more remarks about so groundless a pretence. In the reply there hath been something new offered to your lordships to make out my receiving money from the Masters to be an offence at common law; and there have likewise been mentioned several acts of parliament, to neither of which I have had any opportunity of giving an answer before; I therefore apprehend I have a right to take notice of them now. And first I beg leave to observe to your lordships, that every one of these acts of parliament relates plainly to judges who take bribes, or take money for doing their duty, or for doing those things they were bound to do; they lie upon your lordships' table, and if your lordships will but look upon them, you will find all to be so.

That of Magna Charta is plainly so, that justice shall be administered to the party without paying for it.

So the statute of 12 R. 2, that they shall—

Serj. *Pengelly.* My lord cannot be regular to reply to us on that statute.

E. of *Macc.* The statute is, that they shall not make any officer for brokage.

Sir *G. Oxenden.* We must submit it to your lordships, whether this can be regular; the noble Earl hath had his defence, we have replied; it is not regular for him to enter into a debate now.

The statute is upon your lordships' table; and your lordships will consider it.

Earl of *Macc.* I will not take up your lordships' time any farther in insisting upon it; but I hope at least those gentlemen will not oppose my taking notice of one thing that is new, though not any part of the Articles, which is what the gentlemen have said with relation to Wilson's composition not being binding upon the suitors of the Court; that it is matter of horror that Wilson should trust to the faith of a court of justice, and upon that enter into a composition, which at last should not be effectual and binding. To that give me leave to answer, that if Wilson had acted honestly, and given a fair account of his estate and effects in this case, and it had appeared upon the whole, that he could not pay more than according to this composition; and at the same that it must be a real advantage to the suitors to have received their proportion of what he was able to pay, without the expences of a statute of bankruptcy: in that case he would have the benefit of it: But in case he could have paid more, and this appeared only to be a fraudulent or unfair composition, it would be no way conclusive upon the suitors; and as he ought not to reap any benefit, so neither would they suffer any prejudice by it upon that supposition.

Serj. *Pengelly.* The Managers are entitled to the reply and conclusion.

As to our evidence newly given, it proves in the strongest manner, that if there was a reason for distinguishing between 5,000*l.* and 6,000*l.* it was because the 6,000*l.* was attended with an incumbrance; and if it be said that the Earl had no notice of it, it is proved that his agent, or the person whom he employed, had this account delivered to him, and knew it; and we appeal to the letter which is in their hands. And therefore this is so far a confirmation of the other part of the charge of neglect when security was offered. Why was not the person accepted? Why Mr. Elde preferred?

Mr. Lucas's directions to his brother and his transactions are confirmed by Mr. Ellis, my lord's own chaplain; and the only reason why the bargain was not concluded, was, because of the privilege insisted upon by the person to be indemnified from all contributions and charges.

E. of *Macc.* I beg your pardon, if I trouble your lordships once more in relation to a piece of new evidence, which I did not before reflect upon; I am under a very great disadvantage from these gentlemen, who are for tying me down to very great hardships, so that if any thing slips my memory at what they call the proper time, it must at this rate be lost for ever. I would take notice of one thing, with relation to what Mr. Thomas Bennet said of what I spoke, of denying that the Masters paid for their offices out of the suitors' money; they are attempting to prove that I knew of their doing so, and they prove it by shewing, that I said I had always denied it. But, my lords, is there any of the Masters that came in in my time, that says I knew any such thing? No, my lords, not one of all those Masters that came in in my time appear to have transacted in this manner; there are only two, Mr. Kynaston and Mr. Thomas Bennet; but is there any of them or any other, that pretend that I knew they did so? Here are two persons that paid for their offices out of the suitors' money; and because I told one of them afterwards, admitting what he said to be true, that I had heard it said it was so, and denied it; is it from thence to be concluded that I knew it was really so? My lords, I beg leave to observe as to the matter of the difference of the prices; I gave evidence of the difference of prices in other offices, and their rise from 50*l.* to 500*l.* in one instance, and from 200*l.* to 800*l.* in another.

Serj. *Pengelly.* We are unwilling to interrupt the lord; but now for him to go back again into the whole, is a greater right than his lordship is entitled to; therefore from the duty we owe to your lordships, we hope every thing that is regular shall be observed.

E. of *Macc.* I submit, if your lordships think I am irregular; in the confusion my papers were in when I made my defence from them, the notes relating to this and some other matters were overlooked: but as to the reply, I must beg leave to make one general observation, that the gentlemen have thought the arguments used by me in that defence, either such as they could not answer, or such as needed no answer, since they have not attempted to answer any of them; and which of the two, I must leave to your lordships' determination.

Mr. *Onslow.* My lords, in the course of our reply, we made use of the statute of Henry 4. We have it not printed, but we have an attested copy in writing, and the original roll; if your lordships please, this attested copy may be brought up to your lordships' table.

Mr. *Nicholas Paxton* sworn.

Paxton. My lords, I examined this copy with the deputy-keeper of the Rolls in the Tower, and it is a true copy.

E. of *Macc.* Whether that Parliament Roll be in the nature of a Journal or a Statute Roll, wherein the act of parliament is entered?

Paxton. My lords, the officer is here; he will give your lordships an account.

Mr. *Lutwyche.* It is quoted by my lord Coke to be of the same nature as a Parliament Roll.

Mr. *Holmes* called.

Serj. *Peng.* Mr. Holmes, Where is this Roll kept?

Holmes. My lords, I am deputy-keeper of the records.

Serj. *Peng.* Where?

Holmes. In the Tower.

Serj. *Peng.* What Roll is that?

Holmes. It is the Parliament Roll of the 11th of Henry 4.

E. of *Macc.* I desire he may inform your lordships whether there be any difference or distinction between the Parliament Roll and the Statute Roll?

Holmes. There are a great many private acts entered upon the Parliament Rolls, that are not in the Statute Rolls; what is in the Statute Roll was sent down by writ into the several counties to be proclaimed in the several county courts.

Serj. *Peng.* Whether that is not the original Roll?—*Holmes.* This is the original Roll.

E. of *Macc.* I apprehend the Parliament Roll contains the petitions, and the king's answer.—*Holmes.* It doth.

E. of *Macc.* Before it comes to be published as a law, is it not drawn up in form, and entered upon the Statute Roll?

Holmes. The petition is a piece of parchment; after it hath passed King, Lords, and Commons, then it is entered on this Roll.

Mr. *Onslow.* Whether the king's assent is not entered upon this Roll?

Holmes. There is Le Roy le Veut.

Lord *Lechmere.* I desire, for your lordships' satisfaction, that he may read what is upon the Parchment Roll.

Holmes reads it, &c.

Parl. Rot. N° 28, 11 H. 4.

Item. "Que nul' Chancellier, Tresorer, Gardein de Privie Seal, Counseller du Roy,

Serementz a Counseill du Roy ne nul' autre Officer Juge ne Ministre du Roy parnant fees ou gages de Roy pur lour ditz Offices ou Services, preigne en nulle maniere de temps avenir aucun manere de doun ou brocage de nully pour lour ditz Offices et Services, affaire sur peyn de respondre a Roy de la treble de ceo que issi preignont, et de satisfier la Partie et punys al volonte de Roy, et soit dischargez de son Office, Service, et Counseill pur toutz jours, et que chescun qui vorra pur suer en la dite Matier et la fuit sibien pur le Roy come par luy mesmes et eit la tierce partie de seme de qui le parties soit duement convict."

Le Roy le Voet.

E. *of Macc.* What is there in the margin?

Holmes. "Respectuatur per Dominum Principem et Concilium."

E. *of Macc.* That I may not be misunderstood in this matter, and accused of going to quibble away an act of parliament; your lordships will give me leave to observe, in the first place, that supposing this to be an act of parliament, it relates to cases where judgments are given, or where the parties have a right, and not any way to me or to my case; and having premised this, your lordships will see how this matter stands. There are two Rolls, the one is in the nature of a Journal, wherein an entry is made of the several proceedings, and there are in it great numbers of petitions to the king by the Commons; whereby they pray, that acts may be made, and the king's answers upon them: the answer it may be is agreeing to some part of what they pray, or sometimes to no part, but a provision made quite different from what they pray. At that time the judges drew up the acts afterwards in form, and thence then those acts were entered upon the Statute Roll; and they were promulgated at that time by proclamation on writs issued to the sheriffs of the several counties. Now this hath in the margin of the Parliament Roll, "Respectuatur per Dominum Principem et Concilium." When the judges came afterwards to draw up the statutes of this parliament, in order to publish them, there being a *Respectuatur* set upon this in the Parliament Roll; they forbore to draw it up amongst the rest, and it is not entered upon the Statute Roll at all, nor ever printed in any statute book since, nor was it ever published by the sheriffs, nor consequently sent to the several courts of justice, nor ever taken notice of by them as a law; for the reason of that maxim, that the courts of justice are bound to take notice, *ex officio*, of public laws, and not of private laws, was because the public laws were transmitted to them under the great seal.* The fact then in this case doth appear to be, that when the acts of this parliament of 11 Hen. 4, came to be drawn up and promulgated, this having a *Respectuatur* entered upon it, was not entered upon the Statute Roll, and so not published; this is the fact. However, it doth not concern me, nor doth it relate to the present case at all, as I observed to your lordships before: if I had made a decree for money; if I had refused a writ or Subpœna, unless the party had paid me money, then I had been within the statute, but not in this case.

Mr. *Lutwyche.* We say this statute doth concern him: but as to what he saith that there is an entry in the margin, "Respectuatur per Dominum Principem," &c. this is taken notice of in the 3d Institute, where my lord Coke particularly affirms, that this is an act of parliament in force, and is upon the Parliament Roll, and takes notice of *Respectuatur*, &c. that it was in fact done by the prince, the son of king Henry 4, but without authority; and that notwithstanding such respite, this act of parliament is in full force.

Mr. *West.* Supposing it to be an act of parliament, it extends to the Earl's case; but whether it be an act of parliament or no, is a question that the noble Earl now makes. I thought it had been the common learning, that all the old laws were petitions from the Commons, and the king's answer to them; and that they were entered upon the Parliament Roll; and that the Parliament Roll was only a voucher to the Statute Roll. I could give many instances where that voucher was not pursued, and the Statute Roll drawn up different from the Parliament Roll; and that was the very reason of altering that manner of passing laws into the method that is now used. This is my lord chief justice Hale's account in one of the modern reports.

Mr. *Plummer.* The Earl impeached, hath principally insisted on two things; the one is the taking a less sum of money for a Master's place when vacant, when he had a greater sum offered him; and that therefore it follows, that he hath not made corrupt advantages in order to raise his own fortune, and that he is innocent. He hath called the negociator in this affair to prove, that when he was offered 6,000*l.* he took 5,000*l.* The Commons have by their witness explained it; and this matter is now fully cleared, and your lordships have the whole before you; and I will make no farther observation upon it.

The second thing that he lays great weight upon is, that he called for the accounts of the Masters, notwithstanding the 500*l.* a-piece was paid in. Upon examining the witnesses, it doth not appear that any of the now Masters knew any thing of it. I leave it to your lordships' consideration, whether, if the earl of Macclesfield had been in earnest, he would not have had a return of that order. It doth not appear there was ever any account given in; therefore when these two points are made plainer against him now than they were on our first making good the Charge, though he seems to say the sting of the Impeachment is taken

* As to this stat. 11 Hen. 4, see Ruffhead's Preface to Runnington's edit. of the Statutes, p. 18. N. B. Barrington does not treat of this stat. See, too, Coke Lit. 294, a. Barr. Obs. on 1 Edw. 6.

out, yet it is plain the sting is not taken out of it, but it still remains; and your lordships will give such judgment as is just and legal.

Then the Managers for the House of Commons and the counsel withdrew, and then the House adjourned.

The Eleventh Day.

Tuesday, May 25.

The Lords being seated in their House, and the Managers being come, and seated as before, the usual proclamation was made for silence.

L. C. J. *King.* My lords, your lordships having heard the evidence in this case, have agreed upon a question, which is severally to be put to your lordships in the usual order. The question is this, Is Thomas earl of Macclesfield Guilty of High Crimes and Misdemeanors charged upon him by the Impeachment of the House of Commons, or Not Guilty, upon your honour.

L. C. J. *King.* Robert lord Walpole, What says your lordship? Is Thomas earl of Macclesfield Guilty of High Crimes and Misdemeanors charged upon him by the Impeachment of the House of Commons, or Not Guilty?

Lord *Walpole.* Guilty, upon my honour.

The same question was severally put to the rest, who severally answered, Guilty, upon my honour. The names of the Lords present are as follows:

Barons.—Lechmere, Ducie, Onslow, Bathurst, Foley, Masham, Trevor, Mountjoy, Hay, Gower, Herbert, Ashburnham, Waldegrave, Lynn, Cornwallis, Bruce, Brooke, Compton, Hunsdon, Clinton, Delawar, Percy, Abergavenny.

Bishops.—Exeter, Bristol, Chichester, St. Davids, Norwich, Carlisle, Bangor, Glocester, Ely, Peterborough, Rochester, Oxford, St. Asaph, Winchester, Durham, London.

Viscounts.—Torrington, Harcourt, Cobham, Tadcaster, Lonsdale, Hatton, Townshend, Say and Seal.

Earls.—Pomfret, Harborough, Cadogan, Sussex, Halifax, Bristol, Strafford, Ferrers, Ilay, Deloraine, Stair, Orkney, Selkirk, Findlater, Buchan, Rothes, Cholmondeley, Albemarle, Rochford, Scarborough, Abingdon, Yarmouth, Burlington, Carlisle, Scarsdale, Sunderland, Denbigh, Warwick, Northampton, Leicester, Lincoln, Pembroke.

Marquis.—Tweedale.

Dukes.—Chandos, Manchester, Wharton, Newcastle, Ancaster, (Lord Great Chamberlain,) Roxburghe, Montross, Montague, Grafton, (Lord Chamberlain,) Greenwich, (Lord Steward,) Devonshire, (Lord President.)

Archbishop.—Canterbury.

L. C. J. *King.* My lords, your lordships have unanimously found Thomas earl of Macclesfield Guilty of High Crimes and Misdemeanors charged upon him by the Impeachment of the House of Commons.

Then the Managers of the House of Commons and the counsel withdrew; and then the House adjourned.

The Twelfth Day.

*Wednesday, May 26.**

The Lords being sat, and the Managers being come, the usual proclamation was made for silence.

Then the Gentleman Usher was commanded to call in the earl of Macclesfield, who being come to the bar, the Speaker acquainted him, that the Lords had fully considered of his case, and had unanimously found him Guilty of High Crimes and Misdemeanors charged upon him by the Impeachment of the House of Commons.

E. of *Macc.* I attend your lordships, in obedience to your lordships' command; but I am persuaded, that if your lordships knew what I suffer, your lordships would not have required this of me, the rather as I did not intend to make any exceptions in relation to the proceedings, or give your lordships any farther trouble. I am now to expect your lordships' judgment; and I hope that you will be pleased to consider, that I have suffered no small matter already in the trial, in the expence I have been at, the fatigue, and what I have suffered other-ways; besides the cruel distemper which this hath brought upon me. I have paid back 10,800*l.* of the money already, I have lost my office, I have undergone the censure of both Houses of Parliament, which is in itself a very severe punishment. My lords, the deficiency of Mr. Dormer doth sound large, 25,000*l.* but, my lords, it was not through my fault that the deficiency happened, nor was that Master put in by me; on the contrary, with great difficulty, it is reduced by my means to 10,000*l.* less than otherwise it would have been. My lords, all the loss that can be sustained by any thing charged against me, is only what some of the suitors might have had more for their proportion, than they can now out of Mr. Dormer's effects. His debt came to about 47,000*l.* his effects to about 13,000*l.* which is about a fourth part: I don't find there is one suitor hath made his complaint that he hath not received his 5*s.* in the pound, Mrs. Chitty hath received her share.

Mr. *Onslow.* My lords, we must submit to your lordships. This was proper when the noble lord was making his defence; but it is not so in arrest of judgment. Your lordships have found him guilty of the fact, and he is now arguing in defence of it: if he hath any

* Other Proceedings relating to lord Macclesfield in the House of Lords, will be found at the end of this Case.

thing in arrest of judgment, he may say it, and the Commons are here ready to answer it. I was very unwilling, my lords, to interrupt the Earl, and do it now with great reluctancy; but it is for the sake of regularity in your lordships' proceedings; and we must appeal to your lordships, whether the noble lord is not now going into the repetition of what he said in his defence?

E. of Macc. My lords, I submit whether this be not proper in mitigation of your lordships' sentence; but whether it be or be not, I leave myself to your lordships' justice and mercy; I am sure neither of them will be wanting, and I entirely submit. I don't know whether your lordships will be pleased to dismiss my attendance at this time, or whether your lordships will require me to come again under this very great uneasiness; I submit it to your lordships.

Then the said Earl, as also the Managers, were directed to withdraw; and the House ordered Thomas earl of Macclesfield to be committed to the custody of the gentleman usher of the Black Rod; and then proceeded to the consideration of what Judgment to give upon the Impeachment against the said Earl, and afterwards adjourned to Thursday, 11 o'clock, the 27th of May.

The Thirteenth Day.

Thursday, May 27.

A Message was sent to the House of Commons by Mr. Baron Page and Mr. Justice Denton, to acquaint them, that the Lords are ready to give Judgment against Thomas earl of Macclesfield, if they with their Speaker will come and demand the same.

Hereupon a motion was made, and the question proposed, that this House will demand Judgment of the Lords against Thomas earl of Macclesfield; which occasioned a warm debate, that lasted till five in the afternoon, when the previous question being put, that the question be now put, it was carried in the affirmative by a majority of 136 voices against 65; and then the main question being put, it was resolved, That this House will demand Judgment against Thomas earl of Macclesfield. This done, the Commons resolved, *nem. con.* That the Thanks of this House be given to the members who were appointed the Managers of the Impeachment against Thomas earl of Macclesfield, for their faithful management in their discharge of the trust reposed in them.

Hereupon Mr. *Speaker* (sir Spencer Compton), gave them, they standing up severally in their places, the Thanks of the House, as follows:

"Gentlemen; It is with the greatest cheerfulness that I obey the commands of the House on this occasion; and yet I was never, on any occasion, more sensible of the difficulties of performing them as I ought; but I have this satisfaction in this motion's being made when I least expected it, that my not being prepared may be some excuse for those defects, which I should not have been able to have supplied, had I had never so long a time for consideration.

"Gentlemen, You have maintained the Charge of the Commons, with that force of argument, beauty of expression, and strength of reason, as would have gained you the highest applause in the most flourishing of the Grecian commonwealths; and, I may add,

"Nec dignius unquam
"Majestas meminit sese Romana locutam."

But I shall not enlarge farther on this part of your praise, being sensible that I am not able to express myself in a manner suitable to the dignity of the subject; your own tongues are only equal to such an undertaking; and were I able to do it, your modesty would not permit it: I shall therefore proceed in obeying the commands of the House, in such a manner, as you yourselves may hear it, not only without offence, but I hope with satisfaction; by endeavouring to set in their proper lights the great and lasting benefits your country will receive by your faithful discharge of your duty.

"You have stopped the cries of orphans, and dried up the tears of the widow; even those who must ever be insensible of the benefits they receive, idiots and lunatics (and such only can be insensible of them) will be partakers of the fruits of your labours.

"But you are more particularly entitled to the thanks of this House, by having made the prosecutions of the Commons against great offenders, practicable; the power of impeachment, that sword of vengeance;* which the constitution has put into the hand of the Commons, and which, when drawn by party-rage, when directed by the malice of faction, or wielded by unskilful hands, has too often wounded that constitution it was intended to preserve, has now, by your able management, turned its edge to its proper object, a great offender; and if the wound it has given should not be so deep, as many expect, yet you may be very sure, it can never be imputed to the want of strength in your arm: and I hope and trust, from your prudent conduct through the whole progress of the trial, that this great privilege of the Commons will ever remain a terror to evil doers; and that it may be a praise to them that do well, the House has unanimously come to this Resolution:

"Resolved, *nem. con.* That the Thanks of this House be given to the members, who were appointed the Managers of the Impeachment

* Lord Sommers, when Solicitor General in the year 1691, (See 10 Grey's Debates, 206, and New Parl. Hist. vol. 5, p. 678), likened the power of Impeachment to Goliah's sword kept in the Temple, and not to be used but on great occasions.

against Thomas earl of Macclesfield, for their faithful management in their discharge of the trust reposed in them."

A Message was brought from the House of Commons by sir William Gage and others to acquaint the House of Lords, that the Commons, with their Speaker, do intend immediately to come to demand Judgment against Thomas earl of Macclesfield; and do desire that the Painted Chamber, and other passages to the Lords' House, may be cleared forthwith.

The messengers were called in, and told, that the Lords had given order as desired.

Which was done accordingly.

Then the Commons with their Speaker, being present at the bar of the House, the lord chief justice King, Speaker of the House of Lords, directed the gentleman usher of the Black-Rod, to bring Thomas earl of Macclesfield to the bar; who, after low obeisances made, kneeled until the said lord chief justice acquainted him he might rise.

Then the Speaker of the House of Commons said as follows:

"My lords; The knights, citizens, and burgesses in parliament assembled, in the name of themselves, and of all the Commons of Great Britain, did at this bar impeach Thomas earl of Macclesfield of High Crimes and Misdemeanors; and did exhibit Articles of Impeachment against him; and have made good their Charge:

"I do therefore in the name of the knights, citizens, and burgesses in parliament assembled, and of all the Commons of Great-Britain, demand Judgment of your lordships against Thomas earl of Macclesfield, for the said High Crimes and Misdemeanors."

Then the lord chief justice King, Speaker of the House of Lords, said:

"Mr. Speaker, the Lords are now ready to proceed to judgment in the case by you mentioned.

"Thomas earl of Macclesfield, the Lords have unanimously found you Guilty of High Crimes and Misdemeanors, charged on you by the Impeachment of the House of Commons, and do now according to law proceed to judgment against you, which I am ordered to pronounce.

"Their lordships' Judgment is, and this high court doth adjudge,

"That you, Thomas earl of Macclesfield, be fined in the sum of 30,000*l.* unto our sovereign lord the king; and that you shall be imprisoned in the Tower of London, and there kept in safe custody until you shall pay the said fine."*

Then the Speaker with the Commons withdrew, and the earl of Macclesfield was taken from the bar.

Ordered, "That the Speaker of this House do give order for the printing and publishing the Trial of Thomas earl of Macclesfield; and that no other person but such as he shall appoint, do presume to print the same."

Ordered, "That the said earl of Macclesfield be committed to the Tower of London, there to be kept in safe custody until he shall pay the abovementioned fine of 30,000*l.* to the king;† and that the gentleman-usher of the

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* "Memorandum: the proceeding of the Commons to demand Judgment against the earl of Macclesfield was in this manner:

"Mr. Speaker went with the mace before him; the gentleman-usher of the Black Rod meeting Mr. Speaker at the bottom of the Painted Chamber, and conducting him from thence to the door of the House of Peers:

"And Mr. Speaker went, with his mace on his right-hand, to the bar of the said House; the serjeant at arms attending the House of Commons standing at the bar, on Mr. Speaker's right-hand, with the mace on his shoulder, all the time Mr. Speaker continued at the bar of the House of Peers.

"Then the Lord Chief Justice of the Court of Common-Pleas, being the Speaker of the House of Peers, sitting on the wool-sack, directed the Black Rod to bring the earl of Macclesfield to the bar; which was done accordingly.

"The Black Rod being at the bar; at some distance from Mr. Speaker, on his left-hand, and the earl of Macclesfield, on the left hand of the Black Rod, the Speaker of the House of Peers directed the earl of Macclesfield, at his first coming to the bar, to kneel down: which he did accordingly, in the presence of the Commons, till the Speaker of the House of Peers bid him rise." Comm. Journal.

† "Resolved, *nem. con.* That an humble Address be presented to his majesty, that he will be graciously pleased to order, that the fine imposed, by the House of Lords, on Thomas earl of Macclesfield, or any part thereof, as the same shall be paid into the Exchequer, be issued, and paid, into the Court of Chancery, to be applied towards making good any of the losses of the suitors, occasioned by the deficiencies of the Masters of the said Court, as that Court shall think fit to direct."

"Ordered, That the said Address be presented to his majesty by such members of this House as are of his majesty's most honourable privy-council.

"Mr. Chancellor of the Exchequer reported to the House, That the Address of this House, that the Earl of Macclesfield's fine may be applied to the benefit of the suitors of the said Court, has been presented to his majesty; and that his majesty had commanded him to acquaint this House, that his majesty will give the necessary orders, according to the desire of this House." Comm. Journ. May 31.

It is said that presently after the conclusion of the Trial, the king erased his name from the list of privy counsellors. See New Parl. Hist. vol. 7, p. 556; vol. 8, p. 478.

Black-Rod, in whose custody the said Earl at present is, do him safely convey to the said Tower, and deliver him to the constable thereof, or in his absence to the lieutenant or deputy-lieutenant of the same; and that the said constable, lieutenant, or deputy-lieutenant do receive the body of the said Earl, and him keep in safe custody there, until he shall have paid the said fine."

Then the House adjourned to Monday, May 31, 1725;

And the earl of Macclesfield was conveyed to the Tower, where he continued prisoner for some time till he paid his fine.

The following Proceedings in the House of Lords, relating to lord Macclesfield, are extracted from the Journal:

May 26. It being proposed, "That the said Earl be fined in the sum of 30,000*l.* to the king's majesty:" After debate; and reading the judgments of this House, in the cases both of the viscount St. Albans, and the earl of Middlesex: It was proposed, "To ask the opinion of the judges, whether the sale of an office, that hath relation to the administration of justice, be an offence against the common law?" And a question being stated upon the said proposition: it was resolved in the negative.

Then, it being moved, "To resolve, that Thomas earl of Macclesfield be fined:" the question was put thereupon, and it was resolved in the affirmative.

The question was then put, "Whether the said Earl shall be for ever incapable of any office, place, or employment, in the state or commonwealth?" It was resolved in the negative. Contents 42; Not Contents 42.*

"Dissentient'

1. "Because it is certain that the honour and dignity of the crown, the security of our religious and civil rights, and the preservation of our most excellent constitution in church and state, entirely depend upon the probity, integrity and ability of those persons whom his majesty shall call to his councils, and who shall be employed in any office, place or employment in the state or commonwealth.

2. "Because we conceive, a person impeached by the House of Commons of corruption of the deepest dye, and who, after a full and legal trial, was by this House unanimously found guilty of High Crimes and Misdemeanors, charged on him by the House of Commons, which High Crimes and Misdemeanors were committed by him in the execution of his high station as Lord High Chancellor of Great Britain, ought not to be exempted from this part of the sentence, which has always been thought proper to be inflicted by our ancestors, both in regard to the safety of the government, and the justice of this House, on persons convicted of crimes of the like nature; and we do not find one instance on the Journals of parliament, where this penalty has been omitted.

3. "We apprehend that his majesty having removed the earl of Macclesfield from the trust reposed in him by the custody of the great seal, and having earnestly recommended to the lords commissioners appointed to succeed him, the taking effectual care, that entire satisfaction be made to the suitors of the Court, and that such suitors be not exposed to any dangers for the future, and having fully expressed his gracious disposition that the said lords commissioners should look narrowly into the behaviour of all the officers under their jurisdiction, and should see that such officers act with the strictest regard to justice, and to the ease of his subjects, (which is a plain indication of his majesty's just resentment of the Earl's ill conduct, during his presiding in the Court of Chancery) and having, in great tenderness to the injured nation, recommended the protection of the unhappy sufferers to the justice of parliament, we thought it incumbent upon us, on this great occasion, when the Commons have so clearly made out their charge against the impeached earl, not to depart from the methods of our ancestors in the framing of our sentence, with an unusual tenderness to a person, against whom the whole nation cries for justice, but to pursue their glorious steps upon the like occasions, and to incapacitate the said Earl from having any office, place or employment in the state or commonwealth, as the most effectual means to deter others from being guilty of the like crimes for the future.——

(Signed,) Wharton, Abingdon, Bruce, Strafford, Pomfret, Denbigh, Compton."

"We do dissent to the before mentioned question for the reasons following:

1. "This House having resolved, that the House of Commons have made good their Charge of High Crimes and Misdemeanors against the Earl impeached, and by a subsequent resolution having unanimously declared him guilty, we are of opinion, that it is a necessary consequence in law, justice, honour and conscience, that the disabilities contained in the question proposed should be a part of his punishment, they being such, as we think, the wholesome laws and statutes, against which the Earl has offended, do expressly ordain for the punishment of his crimes, and such as the nature, circumstances and consequences of his guilt do, in our opinions, most justly deserve.

2. "The Articles of the House of Commons, whereof the Earl is, in our opinions, declared guilty, are an accusation of him for many repeated acts of bribery, extortion, perjury and oppression, committed by colour of his office of Lord High Chancellor, and of many endeavours to have concealed and suppressed the discovery of them, even from the knowledge of

* When a motion for any resolution or order is made, if there be an equality of voices, it always passes in the negative.

his majesty; those crimes therefore, being by the laws of this land, and, as we believe, by the laws of all civilized nations in the world, adjudged to be crimes of an infamous nature, we think the incapacity proposed by this question to be one natural and unavoidable step to have been made by this House in the judgment on those crimes.

3. "The Earl, in his Answer to the Articles of the Commons, hath asserted, that the taking the many sums by him from the Masters in Chancery, which sums he there calls presents, was never before looked upon to be criminal; and hopes that the giving or receiving such a present is not criminal in itself, or by the common law of this realm, and that there is not any act of parliament whatsoever by which the same is made criminal, or subject to any punishment or judgment, which can be prayed in this prosecution: The Earl himself, and his counsel on his behalf, upon his trial, attempted to justify his extortions (then called compliments) and endeavoured to maintain, that they are conformable to the laws of the land; but we cannot reflect on this behaviour of the Earl otherwise than as the highest dishonour thrown, by him, upon the laws and government of this kingdom, and a most daring and groundless endeavour to disparage the common law of the land, Magna Charta itself, the clear and express injunctions of many statutes, particularly those passed in the reigns of Richard 2, Henry 4, and Edward 6, in this behalf, and of an act passed this session of parliament for the indemnification of the Masters in Chancery; against the plain sense of all which laws the Earl has, in our opinions, knowingly and wilfully offended; and as this unparalleled justification attempted by the Earl will be transmitted to all posterity, we think it absolutely necessary that the punishment proposed by this question should have been inflicted, in vindication of the laws and government itself, against the aspersion the Earl has thrown upon both; and to prevent any imputation which may hereafter be cast on the honour and justice of this House, as having, on this occasion, in any degree seemed to favour or countenance such defence.

4. "The Earl has in his Answer asserted some of his practices to have been long used by his predecessors, and by others being chief justices, Masters of the Rolls, and other judges; and on his trial offered evidence to prove his assertion in four instances only, three of them in the time of one, and the other in the time of his immediate predecessor; but though those instances, as we think, were unattended with the many aggravations of the Earl's guilt in those respects, yet lest those examples, together with that of the Earl, should hereafter be construed a mitigation of his, or an encouragement to the like offence, we think the punishment now proposed ought to have been inflicted, by which it would become the more exemplary; and the rather, because it appears to us highly probable, that the imputation, as it is thrown by the Earl upon his predecessors, is unjust; the memory of many of those wise and excellent persons never having been, as we believe, stained with an imputation, till the Earl cast it on them; and some of his predecessors having, in several ages, fallen under the severe and strict inquisition of parliament for bribery and corruption, without any charge upon them for that criminal practice.

5. "We are of opinion, that this House, now exercising its judicature as the supreme court in this kingdom, upon an accusation of the Commons for offences against the known laws of the land, has no legal power or authority to dispense with or omit those punishments which are expressly ordained by positive acts of parliament; and it appears to us to be indisputable, that the disabilities proposed by this question are expressly ordained by the statute made 11 Hen. 4, and in some degree by the statute 5 and 6 Edw. 6, against buying and selling offices, for the very same offences of which this House hath, as we conceive, declared (and of which we are fully satisfied in our consciences) the Earl is guilty; and the punishment proposed in this question hath been inflicted by the House in the cases of the lord Bacon and the earl of Middlesex, for corruptions, in our opinions, much less heinous than the crimes of the Earl impeached; and the judgments given by this House on those two persons were founded, as we think, not only upon the nature of the crimes, but were directed and prescribed by the acts of parliament above mentioned, and still remain on the records of this House unimpeached, and their authority never judicially questioned, to our knowledge, but are often referred to and approved by the most learned authors and judges of the laws of this land: we are therefore of opinion, that it was not only wise, but even that the law requires, that the judgment upon the Earl impeached should be consonant in this respect to the judgment of this House, in those two instances; whereby the law of the land in this particular stands declared, as we think, by the authority of the supreme judicature of the kingdom; and which no power less than the authority of an act of parliament, in our opinions, can abrogate.

6. "It having appeared, on the trial of the impeached lord, that the most dangerous and destructive corruptions have been committed by him whilst in the highest station in the administration of public justice, to the great dishonour of the crown, and the detriment of great numbers of the king's subjects; and, in one instance, whilst he (with others) was in the exercise of the regal authority; we think it of the highest consequence to the honour and support of his majesty's government, and the satisfaction of the whole kingdom, that the Earl should, by the judgment of this House, have been incapacitated from ever having the power or opportunity of re-acting the like corruptions, against which, as we conceive, there could be no security, but by inflicting upon

him the disabilities proposed in this question.——*(Signed,)* Scarsdale, Greenwich, Strafford, Denbigh, Buchan, Halifax, Harborough, Selkirk, Orkney, Ashburnham, Wharton, Carlisle, Litchfield, Gower, Brooke, Bruce, Manchester, Hay, Masham, Northampton, Abingdon, Bristol, Bathurst, Lechmere, Sussex."

"Then it being moved to resolve, That the said Earl shall never sit in parliament, nor come within the verge of the Court, after debate, it was resolved in the negative, by 45 against 39.

"Dissentient'

1. "We cannot agree to this resolution for the reasons given in the last Protest; and further, we conceive, that there was the greater necessity for the punishment proposed in this, from the determination of the House on the former question, from whence (and also from the question having passed in the negative) there remains, as we apprehend, no punishment but a pecuniary one, to be inflicted on the impeached Earl for his heinous and unexampled misdemeanors; which punishment we think (and we fear the whole nation will judge) to be utterly unadequate to his transgressions, and not consistent with the resolutions already passed by this House upon the Earl, whereby he is rendered in judgment of law, as we think, an infamous person, and not capable of bearing testimony as a witness, much less to sit in this supreme court as a judge, perhaps on points of the highest moment to the kingdom, and over the lives, liberties and properties of the subjects, many of which he has, in our opinions, already so notoriously injured.

2. "Because we find, that the punishment now proposed has been inflicted in the two instances of lord Bacon and the earl of Middlesex; and the like in earlier instances, particularly in the case of Hubert de Burgo, created earl of Kent, who was afterwards charged in parliament for counselling the king to cancel Magna Charta, and for other offences: and was degraded from his dignity by the judgment of his peers; and we conceive, that the condemnation which this House has already passed on this Earl is founded upon the most aggravated guilt which has ever appeared in any criminal, whose offences were not capital; amongst which his repeated wholesales (as we conceive them to be) of the justice of the Court of Chancery, in the corrupt dispositions of the Offices of the Masters, were, as far as in him lay, so many barters and sales of Magna Charta itself, by which the sale of justice is prohibited.

3. "We conceive it to be utterly inconsistent with the honour and dignity of this House, to suffer a lord condemned, as we think, for the most dangerous corruptions committed by him whilst he was a judge, to continue afterwards in the enjoyment of his seat in this House, under no other censure than of a fine, and imprisonment till that is paid; because we fear, it may hereafter give too much encouragement to the worst corruptions in the greatest officers of state, if, from the example of this earl, it should be hoped their crimes may be ransomed by a small part, perhaps, of their corrupt and extorsive gains; by which means the greatest offenders of this sort may think their impunity the more secure, by so much the higher that they carry, and the more they succeed in their corrupt practices: We think also, that the sum of 30,000*l.* if that should be the fine, does very little, if at all, exceed the gross sums this Earl has received, as we believe, in bounties from his majesty, over and above the due profits of his offices, and the other great sums he has extorted and still retains; we are therefore of opinion, that the infamy, which, we think, is due to the crimes of which the Earl is condemned, should have been fixed upon him by the disability proposed in this question.——*(Signed)*, Scarsdale, Wharton, Strafford, Selkirk, Manchester, Gower, Bathurst, Harborough, Northampton, Brooke, Bruce, Buchan, Denbigh, Halifax, Lechmere, Masham, Greenwich, Ashburnham, Abingdon, Carlisle, Bristol, Hay, Litchfield, Orkney."

We dissent to the last mentioned question for the reasons following:

1. "For the first reasons given on the foregoing question, which we apprehend hold the stronger against his being permitted to sit in the highest court of judicature, since it may expose the judgment of this House to censure, when a person guilty of such corrupt practices shall be one of the judges.

2. "We apprehend, that a person whom his majesty has in such a manner, removed from being a judge of his subjects properties, cannot be thought fit to sit in this House, in such case as may affect the lives of every peer of this House, and the property of all the subjects of Great Britain.——*(Signed)*, Wharton, Pomfret, Abingdon, Bruce, Compton, Strafford."

END OF VOL. XVI.

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ADDENDUM TO VOL. XVI.

The following Note was accidentally omitted in its proper place:

Note to words "Mr. Justice Eyre," * p. 84, of this Volume.

* Mr. Justice Foster was of opinion that this Case never occurred. Where he first mentions it, he writes in italics "if such case there ever was." And proceeds: "This Case is not to be found in any Report, printed or MS. that I have met with, or heard of; nor have I, upon a strict enquiry, met with any footsteps of such Case among the minutes of proceedings on the Crown-side in the county where the Case is supposed to have arisen; though the minutes from 1708 to 1722 have been carefully searched. For these reasons, and what is suggested in the marginal Note, I conclude, that no such Case ever existed."

The following is the Note:

"Justice Eyre did not go the Western Circuit in the Summer 1712. Ward and Price went at that time. This information I have from Mr. Maddock, Clerk of Assize of the Western Circuit."

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